Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Petition for Declaratory Ruling to the Iowa Utilities Board and Contingent Petition for Preemption	)	WC Docket No. 09-152

COMMMENTS OF ALL AMERICAN TELEPHONE COMPANY, INC. SUPPORTING CLARIFICATION OF THE COMMISSION'S RULES AND POLICIES RELATING TO THE IOWA UTILITY BOARD'S ADOPTED DECISION

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SUMMARY

The All American Telephone Company, Inc. supports the Petition for Declaratory Ruling filed by Great Lakes Communications Corporation and Superior Telephone Cooperative. All American agrees that the Iowa Utilities Board's ("IUB") recently-adopted findings in a state complaint case vastly overstep the IUB's authority, and requires that the Commission issue a Declaratory Ruling informing the IUB – and other state regulatory commissions and federal courts – that the Commission has occupied the field regarding the regulation of access charges associated with so-called "access stimulation" programs. Indeed, should the IUB issue an order that promulgates its adopted findings, such order would merit immediate stay and preemption by the Commission.

All American is one of three local exchange carriers that have filed a joint collection action against AT&T for nonpayment of access charges. This collection action was filed in the Federal District Court for the Southern District of New York ("SDNY") in March 2007.

Recently, the SDNY Court referred to this Commission one of the counterclaims included in AT&T's Answer to the collection action complaint. AT&T responded to this referral by filing an Informal Complaint with this Commission. All American responded to the AT&T Informal Complaint by filing its own Petition for Declaratory Ruling, demonstrating that the Commission's reliance on party- and fact-specific adjudicatory proceedings has failed to quiet access disputes, and that a Declaratory Ruling with broad industry effect is the only practicable means of providing guidance to the industry, the state regulators and the courts. The Commission did not put that Petition out for public comment, but the Great Lakes Petition raises sufficiently similar issues that the Commission can address All American's concerns in the contest of the above-captioned proceeding.

All American has identified at least 17 federal court cases, all of which address the same issues that are raised by the IUB adopted findings. All American's SDNY Court has referred one issue to this Commission for resolution, and another federal court – hearing a collection action arising from the same access service applications – has referred the collection action in its entirety to the Commission. This clearly demonstrates the need for the Commission to provide guidance to all of the federal courts hearing these cases.

There is no question that the 17 pending federal court cases, the IUB proceeding, and the two court referrals to the Commission all raise identical issues. In these Comments, All American quotes excerpts from all 17 cases, from the Transcript of the IUB's Decision Meeting in which it adopted its findings, the portion of the AT&T SDNY Answer and Counterclaims that has been referred to the Commission, and the Informal Complaint filed by AT&T in response to that referral. The plain language of all of these documents make clear that identical legal issues are raised in each, and that uniform, comprehensive Commission guidance is needed by all.

The Commission can best quiet the instant disputes by issuing the Declaratory Ruling requested in the Great Lakes Petition. The Commission should also expand the scope of that Ruling to address all of the pending issues that All American has identified. The Commission's Declaratory Ruling should reiterate the current state of the law, confirm the binding precedential value of the four decisions that the Commission has issued on these matters, and should restate its prohibition against self-help refusals to pay access charges, which it has administered consistently for thirty years.

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COMMMENTS OF
ALL AMERICAN TELEPHONE COMPANY, INC.
SUPPORTING THE PETITION FOR DECLARATORY RULING
FILED BY GREAT LAKES COMMUNICATIONS AND SUPERIOR TELEPHONE

All American Telephone Company, Inc. ("All American") hereby submits its comments in support of a Petition for Declaratory Ruling submitted by Great Lakes Communications Corporation and Superior Telephone Cooperative ("Great Lakes Petition").[1] The Great Lakes Petition was submitted in response to a Decision Meeting conducted by the Iowa Utilities Board ("IUB"), which apparently was the culmination of a two-year proceeding investigating allegations of "traffic pumping" leveled by Qwest, Sprint and AT&T against a number of Iowa local exchange carriers ("LECs"). At that meeting, the IUB adopted a series of findings addressing the various aspects of the interexchange carrier ("IXC") allegations. To date, the IUB has not issued an order. The Great Lakes Petition asks the Commission to issue a Declaratory Ruling that the Commission has occupied the field regarding the regulation of access charges associated with conference and chat-line traffic, and asks the Commission to preempt an order if the IUB should issue one.

In these Comments, All American notes that it has filed its own Petition for Declaratory Ruling – filed by All American and two other LECs – which addresses additional issues that are

[1] Petition for Declaratory Ruling to the Iowa Utilities Board and Contingent Petition for Preemption by Great Lakes and Superior, filed August 14, 2009 in WC Docket No. 09-152 ("Petition"), see Public Notice, DA 09-1843 (rel. Aug. 20, 2009).

relevant to the IUB's action. All American asks that the Commission issue a single Declaratory Ruling that addresses both the issues raised by the Great Lakes Petition, and the issues raised by the All American Petition. In these Comments, All American discusses the issues that the Commission should address. All American makes this request pursuant to Section 1.2 of the Commission's Rules, 47 U.S.C. § 1.2, and Section 5(d) of the Administrative Procedure Act, 5 U.S.C. § 554(e).

I. BACKGROUND: ALL AMERICAN IS INVOLVED IN A PENDING COLLECTION ACTION AGAINST AT&T THAT HAS BEEN REFERRED TO THIS COMMISSION – THE REFERRAL RAISES NUMEROUS ISSUES IDENTICAL TO THOSE RAISED IN THE IUB ADOPTED FINDINGS

All American and two other LECs, e.Pinnacle Communications, Inc. and ChaseCom, are LECs that provide or formerly provided access services in Utah and/or Nevada. Starting in 2006, the three LECs became subject to campaigns of self-help refusals to pay access charges conducted by AT&T, Qwest, Verizon and the other largest interexchange carriers ("IXCs"). As explained below, All American and the other LECs filed a collection action against AT&T, part of which has recently been referred to this Commission.

A. THE ALL AMERICAN COLLECTION ACTION AGAINST AT&T, AT&T'S COUNTERCLAIMS, AND THE REFERRAL TO THE COMMISSION

On March 6, 2007, an action for the collection of unpaid access charges was filed against AT&T before the Federal District Court for the Southern District of New York ("SDNY") (the "*Collection Action*")[2] by All American, e.Pinnacle and Chase Com (the *Collection Action* Plaintiffs).

That case remains pending. On March 16, 2009, the judge in the case, Judge William Pauley, referred one of AT&T's counterclaims to the Commission. Specifically, Judge Pauley

[2] *All American Tel. Co., Inc. v. AT&T, Inc.*, 07 Civ. 861 (S.D.N.Y. 2009) ("*Collection Action*").

referred AT&T's claim that commercial relationships between LECs and conference or chat-line operators render the LECs "sham entities" and that these relationships somehow violate § 201(b) of the Communications Act, and somehow absolve AT&T of the obligation to pay lawfully tariffed rates for the access services it has taken from the Plaintiffs. AT&T's "sham entity" argument, as stated in AT&T's Answer and Counterclaims in the pending *Collection Action*, is:

Count III

(Unreasonable Practice in Violation of 47 U.S.C. § 201(b) - Sham Entity)

> 56. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 through 55 of its Counterclaims as set forth fully herein.
>
> 57. On information and belief, Counterclaim Defendants [the *Collection Action* Plaintiffs] were constituted as sham entities designed solely for the purpose of engaging in the traffic pumping schemes discussed above to extract inflated terminating switched access charges from AT&T and other long distance carriers.
>
> 58. Counterclaim Defendants, have in fact sought to extract inflated terminating switched access charges from AT&T and other long distance carriers for terminating switched access services that Counterclaim Defendants did not provide.
>
> 59. The FCC has held creating a CLEC "as a sham entity designed solely to extract inflated access charges from IXCs ... constitutes an unreasonable practice in connection with the provision of access services in violation of Section 201 (b) of the Act." Total Commc'ns. Servs., Inc. and Atlas Tel. Co., 16 FCC Rcd. 5726, ¶16 (2001).
>
> 60. AT&T has been damaged by Counterclaim Defendant's violations of Section 201(b), and prays for damages in an amount to be determined at trial, interest, attorney's fees, court costs, declaratory relief, injunctive relief and such other relief as the Court may deem just and reasonable.[3]

A copy of the AT&T Answer and Counterclaims in the SDNY *Collection Action* is appended at Attachment 1.

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[3] *Collection Action*, 97 Civ. 861, Answer and Amended Counterclaims of Defendant AT&T Corp. to Plaintiffs' First Amended Complaint, dated August 7, 2008, at 41.

While this counterclaim focuses on AT&T's assertion that cross-ownership between LECs and conference or chat-line operators creates a "sham entity," the counterclaim is based on a set of asserted facts and conclusions of law that are essentially the same as those raised by Qwest (and supported by AT&T) in the IUB proceeding. Specifically, AT&T asserts that (citations refer to the AT&T Answer at Attachment 1):

- Counterclaim Defendants "have not provided terminating switched access service". Page 35.
- The conference or chat-line bridges at issue are not located within the *Collection Action* Plaintiffs' local exchanges and do not constitute an "end user premises". Pages 36-37.
- The conference and chat-line operators were not billed, and did not pay, for the services provided by the LECs, and so are not "end users." Pages 37-38.

In making his referral to this Commission, Judge Pauley noted that AT&T's "sham entity" argument raises questions relating to telecommunications policy and ratemaking that are within the exclusive province of the Commission:

> A determination of the appropriate tariff rate in the absence of a sham entity involves policy and technical decisions within the FCC's field of expertise. See MCI Telecomm. Corp. v. Dominican Commc'n Corp., 984 F. Supp. 185,189-90 (S.D.N.Y. 1997) (noting reasonable tariff determinations are best made by the FCC); see also MCI Telecomm. Corp. v. Ameri-Tel. Inc., 852 F. Supp. 659, 665 (N.D. III.1994) (referring claim raising the reasonableness of tariff to FCC); see also Total [Telecomm. Servs.. Inc. v. AT&T Corp.,] 16 FCC Rcd. 5726 ¶ 39 (determining that the proper remedy for sham entity violation was the reasonable tariff that would be charged in the absence of the sham entity). In addition, were this Court to determine the appropriate rate for AT&T, that decision might discriminate against other customers of the CLECs. The FCC is in the best position to determine the appropriate rate for all customers using identical services. See MCI, 984, F. Supp. at 190 (noting that non-discrimination is one of the key components of the federal regulatory scheme). Thus, at least the first three factors weigh in favor of referring this claim to the FCC.[4]

Judge Pauley did not stay the case pending referral of the "sham entity" issue to the Commission,

[4] *All American Tel. Co., Inc. v. AT&T, Inc.*, 2009 WL 691325, at *4 (S.D.N.Y. Mar. 16, 2009) (footnote omitted).

and in a subsequent order established a schedule for completion of discovery and submission of dispositive motions.

B. THE AT&T INFORMAL COMPLAINT AND THE *COLLECTION ACTION* PLAINTIFFS' PETITION FOR DECLARATORY RULING

1. The AT&T Informal Complaint

On April 20, 2009, AT&T acted on the SDNY Court's referral by filing an Informal Complaint with the Commission's Enforcement Bureau, and the *Collection Action Plaintiffs* were served with notice of the filing by the Enforcement Bureau on April 20, 2009. A copy of the AT&T Informal Complaint is appended at Attachment 2. The AT&T Informal Complaint apes many of the arguments made by Qwest, AT&T and Sprint in the IUB proceeding (the following citations refer to the AT&T Informal Complaint at *Attachment 3*):

- The LECs do not serve a "single legitimate customer." Page 3, ¶ 4; Page 16, ¶ 33, and *passim*.
- "Traffic-stimulation activity" is not the provision of genuine local exchange or exchange access service. Page 15, ¶ 32.
- None of the traffic routed to conference or chat-line operators qualified as switched access services under the LECs' tariffs. Page 17, ¶ 34.
- The types of services that the LECs provide to their conference and chat-line operators determines whether the LECs provide access service. Page 17, ¶ 35.
- The types of facilities that the LECs provide to their conference and chat-line operators determines whether the LECs provide access service. Page 17, ¶ 35.
- The fact that the LECs did not impose charges on their conference/chat-line operators is "instructive" and indicates unlawful activity (citing the fact pattern in the Commission's *Total Telecommunications* decision[5]). Pages 20-21, ¶ ¶ 44-45.
- The revenue-sharing arrangement between the LECs and their conference/chat-line operators is "instructive" and indicates unlawful activity (citing the fact pattern in the Commission's *Total Telecommunications* decision.) Pages 20-21, ¶ ¶ 44-45.

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5 *Total Telecomms. Servs., Inc. v. AT&T Corp.,* 16 FCC Rcd. 5726 (2001), *aff'd in part, rev'd in part sub nom., AT&T Corp. v. FCC*, 317 F.3d 227 (D.C. Cir. 2003).

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- The LECs have "brazenly violated" their obligations under their state-issued certificates. Page 23, ¶ 48.
- The LECs "share a very close relationship" with their conference/chat operators, which is unlawful. Page 24, ¶ 51 and *passim*.
- The LECs have engaged in unlawful conduct, and are not entitled to collect access charges for calls made to their conference/chat-line operators. Page 26, ¶ 56.

As demonstrated below, these arguments are substantially identical to arguments considered by the IUB, and that formed the basis for the IUB's adopted findings.

2. <u>The *Collection Action* Plaintiffs' Petition for Declaratory Ruling</u>

On May 20, 2009 the *Collection Action Plaintiffs* filed a Petition for Declaratory Ruling to Reconfirm that Local Exchange Carrier Commercial Agreements with Providers of Conferencing, "Chat Line" and Other Services Do Not Violate the Communications Act. This Petition was filed with the Secretary of the Commission, and was also submitted to the Enforcement Bureau, as a response to the AT&T Informal Complaint. The Petition for Declaratory Ruling urges the Commission not to respond to the SDNY Court's referral by conducting yet another party-specific Formal Complaint proceeding. Such a proceeding would further tax the resources of LECs already severely harmed by more than three years of self-help refusals to pay access charges by AT&T and other IXCs, would effect significant additional delay to a case that has been pending since March 2007, and would merely establish yet another finding that IXCs – or state regulatory commissions such as the IUB – could dismiss as not having precedential value because the ruling was specific to the parties and facts of the case.

The *Collection Action* Plaintiffs' Petition for Declaratory Ruling does the following:

- Discusses precedent indicating that the Commission has broad authority to respond to court referrals by either Declaratory Ruling or Formal Complaint, and has routinely used the Declaratory Ruling process to do so. In fact, the Commission has already issued a Declaratory Ruling in response to the current "traffic pumping" dispute, reiterating its established policies against call blocking. This Declaratory Ruling was issued on the Commission's own motion to stop widespread blocking of calls to conference and chat-line services by AT&T, Qwest and the other largest IXCs.

- Identifies a dozen other federal court cases that deal with issues identical, or substantially similar, to the issues raised in the SDNY Court's referral. In its related Reply Comments,[6] the *Collection Action* Plaintiffs identified three more federal court cases that had been filed since the Petition for Declaratory Ruling was submitted.
- Demonstrates that failure to quiet this nation-wide dispute would lead to gross judicial and regulatory inefficiencies and unconscionable delay that would only support the IXC's patently unlawful campaign of self-help.
- Demonstrates that the Declaratory Ruling vehicle is appropriate because the Commission need only confirm the state of established law – it has already ruled against IXCs and for LECs four times in identical disputes, and has a consistent line of decisions over three decades that prohibit self-help refusals to pay access charges.

The Commission did not put the *Collection Action* Plaintiffs' Petition for Declaratory Ruling out for public comment. Nevertheless, it attracted comments in opposition, filed by both Qwest and Verizon. As noted in the *Collection Action* Plaintiffs' Reply, this fact alone demonstrates that the issues referred by the SDNY Court extend far beyond the specific facts of the *Collection Action* Plaintiffs' action against AT&T, and raise legal and policy issues that affect other parties. Had the Commission placed the Petition out for public comment, it would have received comments from a much broader section of the industry.

C. The Iowa Utilities Board's Adopted Findings

On August 14, 2009 the Iowa Utilities Board convened an open meeting to discuss its findings at the conclusion of an extensive complaint proceeding. That proceeding was instigated by a complaint from Qwest against eight Iowa LECs, which Qwest accused of engaging in unlawful "traffic pumping." That complaint was later joined by AT&T and Sprint. The two-

[6] Reply of All American Telephone Co., Inc., e.Pinnacle Communications, Inc. and ChaseCom Regarding Their Petition for Declaratory Ruling, dated June 11, 2009 (filed with the Secretary but not assigned to a docket, and filed in Enforcement Bureau File No. EB-09-MDIC-0003).

year hearing considered numerous arguments against, and defenses of, the application of access charges to calls made to providers of free conference and chat-line services and some international services.

At its Decision Meeting, the IUB adopted a series of findings, ruling comprehensively on the arguments made by Qwest, AT&T and Sprint. While the IUB has not yet issued an order, it has released a transcript of the open meeting, in which the adopted findings are discussed in detail. A copy of the transcript of the IUB open meeting is appended at Attachment 3 ("IUB Transcript").

As the IUB Transcript makes clear, the IUB adopted the following findings (all citations are to the IUB Transcript at Attachment 3):

- Found that Free Conference Calling Service Companies were not considered "End Users" under the terms of the tariffs maintained by all eight LEC respondents. Page 1.
- Found that FCC's decision in *AT&T v. Jefferson Telephone* does not preclude the IUB from addressing the issues because that case did not directly address the same issues as the case before the IUB. Page 1.
- Found that the Commission's decision in *Qwest v. Farmers & Merchants* is not a final decision, and that any findings of fact or law from the Commission's decision are not binding on the IUB. Page 1.
- Found that the IUB had a more complete record in this case than the FCC had in its *Qwest v. Farmers & Merchants* Formal Complaint proceeding. Page 1.
- Found that the conference and chat-line companies did not subscribe to the LECs' services, and so were not "end users." Page 1.
- Found that the LECs did not bill for end user subscriber line charges or universal service charges, and so their conference and chat-line customers were not "end users." Page 1.
- Found that the conference companies were not "end users" but instead were "joint business venture" partners. Page 1.
- Found that revenue sharing, alone, is not determinative of whether the conference companies were end users. Page 1.

- Found that since the conference companies were never end users under the tariffs, the tariffs do not apply and thus the filed rate doctrine does not apply. Page 1.

- Found that the traffic did not terminate at the end user's premises since the conference companies did not own or lease or otherwise control the premises where the conferencing equipment was installed. Pages 2, 3.

- Found that the LECs were obligated to make retroactive refunds of whatever access charges they collected from the IXCs. Page 3.

- Found that revenue sharing, on its face, is not inherently unreasonable, but is a "warning or red flag" that something unreasonable is occurring. Page 4.

- Found that IUB should convene a new rulemaking proceeding to consider rules regarding what changes must be made to tariffed rates when LECs experience increases in traffic volumes. Page 4.

- Found that a rulemaking proceeding should be enacted to amend the IUB's rules to permit them to restrict access to obscene calling services. Page 5.

- Found that some LECs had "few" customers, which was an unreasonable practice that could merit revocation of their certificates. Page 6.

- Found that Qwest engaged in self-help refusals to pay access charges, and that "unilaterally withholding payment is not a preferred form of self-help". Pages 6-7.

- Found that, because the IUB also found that the LECs could not impose access charges on Qwest, there was no penalty associated with Qwest's self-help. Page 7.

- Found that Sprint wrongfully blocked calls associated with conference traffic and should be subject to civil fines for any future violations. Page 7.

In making these findings, the IUB Transcript does not distinguish between intrastate and interstate traffic. Indeed, the adopted findings expressly apply to international traffic, "pornographic content," telephone number allocation and other matters clearly outside the IUB's jurisdiction. Moreover, the LEC tariff language examined by the IUB is identical in both the LECs' federal and state tariffs, and many provisions are identical or similar to the provisions in the All American, e.Pinnacle and ChaseCom tariffs, which are the subject of the SDNY Court's referral. In addition, while the complainants in the IUB proceeding – Qwest, AT&T and Sprint –

argued that the necessary inquiries were fact-specific and conducted exhaustive fact discovery on the LECs, the IUB made almost all of its findings applicable en masse, and granted the complainants the identical relief – exemption from paying access charges, and refunds of charges paid – against all eight LEC respondents.

As discussed in the following section, AT&T's Informal Complaint made in response to the SDNY Court's referral apes the arguments that Qwest, Sprint and AT&T made before the IUB. The IUB generally adopted these IXC arguments, and so its adopted findings contain arguments identical to those now before the Commission in the SDNY Court's referral.

D. THE SDNY REFERRAL RAISES ISSUES IDENTICAL TO THOSE RAISED BY THE IUB'S ADOPTED FINDINGS

While the IXCs argue that the disputes over "traffic pumping" are unique to each carrier, and require exhaustive, fact-specific discovery, their position is belied by the arguments they have made in state regulatory proceedings and federal district court actions across the country. This dispute is about one thing – the IXCs believe they are paying too much in access charges to LECs that carry free conferencing and chat-line traffic. This is why the relief they seek is identical in every case – refunds of access charges they have already paid for such traffic, and regulatory absolution from the obligation to pay access charges for such traffic in the future. This is, of course, the relief accorded Qwest, AT&T and Sprint in the adopted findings of the IUB.

Below, All American demonstrates that the issues referred from the SDNY Court – as enunciated in the AT&T Answer and Counterclaims and in its Informal Complaint – are identical or substantially similar to the issues raised in the IUB's adopted findings that are the subject of the Great Lakes Petition for Declaratory Ruling. Specific arguments that are common to the SDNY referral and the IUB adopted findings include:

- Calls that are generated by "Traffic Stimulation" do not constitute legitimate access traffic.
    - AT&T Informal Complaint Page 15; IUB Transcript at Pages 1-3.

- Calls to conference and chat-line operators do not constitute "terminating access service."
    - AT&T Answer and Counterclaims Page 35; IUB Transcript at Pages 1-3.

- The economic relationship between LECs and their conference/chat-line operators is unreasonable, and prevents the imposition of access charges on calls to those operators.
    - AT&T Informal Complaint Pages 17, 24; IUB Transcript Page 1.

- The number of customers served by LECs determines whether they can impose access charges.
    - AT&T Informal Complaint Pages 3, 16, etc.; IUB Transcript Page 6.

- The LECs are not in compliance with their state certificates, and so cannot impose access charges (including interstate access charges).
    - AT&T Informal Complaint Page 23; See IUB Transcript at Page 6.

- The types of facilities that LECs use to provide service to their conference and chat-line operators, where those facilities are located, and who owns them, determines whether the traffic is access traffic.
    - AT&T Informal Complaint Page 17; AT&T Answer and Counterclaims Pages 36-36; IUB Transcript at Pages 2, 3.

- If LECs do not bill the confrence/chat-line operators for services, they are not legitimate end users, and the traffic is not access traffic.
    - AT&T Informal Complaint at Pages 20-21; AT&T Answer and Counterclaims Pages 37-38; IUB Transcript at Page 1.

- Revenue sharing arrangements, depending on the circumstances, can indicate unlawful activity and can render access charges inapplicable to the related traffic.
    - AT&T Informal Complaint at Pages 20-21; IUB Transcript at Page 4.

- The Commission and the IUB are empowered to require retroactive refunds of whatever amounts of access charges IXCs paid to LECs engaged in "access stimulation." AT&T Informal Complaint at Page 26; IUB Transcript at Page 3.

Moreover, central to both the IUB adopted findings and the SDNY Court referral is the relevance and precedential value of prior Commission decisions. The IUB expressly found that the Commission's decision in *AT&T v. Jefferson Tel.*[7] is irrelevant to its decisions. IUB Transcript at Page 1. Similarly, the IUB refused to apply the Commission's rulings in its *Farmers & Merchants* decision,[8] on the grounds that the IUB had a "more complete record." IUB Transcript at Page 1. Of course, AT&T did not cite this precedent in its Formal Complaint, because all these rulings are fatally adverse to the AT&T position. However, these cases will be a central issue in the defense case put on by All American, e.Pinnacle and ChaseCom, should this case proceed to a Formal Complaint. In this regard, the SDNY Court referral requires that the Commission directly address the application of these cases, just as the Commission must do when addressing the IUB adopted findings.

Because the IUB adopted findings raise issues identical to, or substantially similar to, issues included in the SDNY Court's referral, the Commission should address them both in the same venue. The interests of judicial efficiency and equity require that the Commission spare the *Collection Action* Plaintiffs the cost and delay associated with a Formal Complaint proceeding, and address these issues in a Declaratory Ruling that will provide guidance equally to the IUB and the SDNY Court. Moreover, this result is compelled by the fact that identical issues are pending in at least 17 additional cases now pending before federal district courts, at least one of which has also been referred to the Commission. These cases are discussed in the following section.

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[7] *AT&T Corp. v. Jefferson Tel. Co.*, 16 FCC Rcd 16130 (2001).
[8] *Qwest Commc'ns Corp. v. Farmers and Merchants Mutual Tel, Co.*, 22 FCC Rcd 17973 (Oct. 2, 2007).

II. EVEN WITHOUT THE IUB ADOPTED FINDINGS, THE PENDENCY OF AT LEAST 17 FEDERAL COURT COLLECTION ACTIONS, EACH OF WHICH ARE ADDRESSING IDENTICAL "ACCESS STIMULATION" ISSUES, COMPELS A COMPREHENSIVE RESOLUTION BY DECLARATORY RULING

Over the last three years, AT&T has been joined by other IXCs – including Sprint, Qwest and Verizon – in engaging in self-help refusals to pay tariffed access charges. As a result, aggrieved LECs have filed collection actions in federal courts across the country. In addition, some of the IXCs have filed complaints against LECs, both in federal court and before state public service commissions. All of these disputes reflect identical issues – IXCs engaging in self-help refusals to pay access charges tariffed by ILECs and CLECs for calls made to free conference operators, chat-line service providers, and in some cases international calling services. All of these cases raise identical issues, and all of them contain some variant of the AT&T "sham entity" argument. A list of 17 pending cases of which Petitioners are aware, and a brief synopsis of the "sham entity" argument raised in each of those cases, is provided below:[9]

A. THE FEDERAL CIRCUIT COURT CASES

1. Southern District of Iowa[10]

AT&T Corp. v Superior Telephone Cooperative, et al., Docket No. 4:07-cv-00043 (S.D. Iowa).

Count II of the Complaint filed by AT&T. charges that the LEC Defendants "engaged in unjust and unreasonable practices in violation of [47 U.S.C.] § 201(b)" and that the "LEC Defendants are involved in other unlawful schemes and sham arrangements that are also designed to inflate their monthly access charges to AT&T." (Complaint ¶¶ 79-80) (emphasis added).

[9] Petitioners are in possession of all of the pleadings cited in this section. However, in order to maintain a manageable Petition, only excerpts from the pleadings in those cases are appended at Attachment 5. Copies of the full pleadings referenced in this section will be provided upon request.

[10] All the Iowa cases are stayed pending a final FCC order on reconsideration in the *Farmers & Merchants* case.

Qwest Communications Corporation v. Superior Telephone Cooperative, et al., Docket No. 4:07-cv-00078 (S.D. Iowa)

Count I of the Complaint filed by Qwest alleges that the LEC Defendants have engaged in an unjust and unreasonable practice in connection with their provision of interstate communication services, in violation of their 47 U.S.C. § 201(b) duties. … [T]elephone companies were created in large part to serve as a conduit to generate excessive long distance traffic and, therefore, terminating switched access revenue from long distance carriers like [Qwest]." (Complaint ¶¶ 43, 46) (emphasis added).

Referencing Count I of the Complaint, Qwest argued in its Combined Resistance to Various LEC Defendants' Motions to Dismiss that the "Defendants 'tricked' Qwest by contriving a scheme premised upon their creation of a fraudulent class of customers, and then inducing Qwest … to pay the so-called access fees on the traffic that Defendants generated in the illegal scheme." (Resistance to Motion to Dismiss § IV.C.2.) (emphasis added).

Sprint Communications Company, L.P. v. Superior Telephone Cooperative, et al., Docket No. 4:07-cv-00194 (S.D. Iowa)

Sprint, in its Combined Response to Defendants' Motions to Dismiss or Stay, pointedly analogizes the case at bar to *Total Telecomms.*, 16 F.C.C.R. 5726: The gist of [Total] is that a sham transaction cannot be used to artificially increase revenues at the expense of other carriers. That is precisely what is occurring in this case, where there is no reason other than arbitrage for the subject calls to pass through small towns in Iowa." (Response to Motion to Dismiss at fn 15) (emphasis added).

Farmers & Merchants Mutual Telephone Co. of Wayland, Iowa v. Qwest Communications Corporation, 3:09-cv-00058 (S.D. Iowa)

This collection action is still in its initial motions stage. However, the complaint involves the collection of access charges for calls made to conference operators and other service providers, and so can be anticipated to address issues identical to the other collection actions described in these Comments.

Searsboro Telephone Co., Inc and Lynnville Telephone Company, Inc. v. Qwest Communications Company, LLC, Docket No. 4:09-cv-00308 (S.D. Iowa)

Qwest has sought consolidation of this case with Qwest v. Superior, Case 07-78 above, on the grounds that "all or virtually all of the legal questions in Case 07-78 are likewise legal questions in the Plaintiffs' action, and the cases likewise share many of the same factual questions for discovery . . . ." Qwest Communications Company's Memorandum in Support of Motion to Consolidate With Case No. 07-0078-JEG-RAW at 6).

2. Northern District of Iowa

Aventure Communications Technology LLC v. MCI Communications Services, Inc., Docket No. 5:07-cv-04095 (N.D. Iowa)

MCI alleges generally that Aventure violated § 201(b) of the federal Communications Act by engaging in "unjust and unreasonable practices by ... conspiring to artificially and exponentially increase the volume of long-distance phone traffic handled by Aventure." (Answer/Counterclaim ¶ 96).

3. Federal District of South Dakota

Sancom, Inc. v. Qwest Communications Corp., No. 07-4147-KES (D. S.D.).

Qwest alleges that "Sancom has undertaken business relationships with certain partners [i.e., free call providers] ... to dramatically increase the amount of long distance traffic delivered through Sancom's switches to Sancom's partners, namely to the free calling service companies, and bill long distance carriers such as Qwest exorbitantly high terminating switched access charges." Qwest First Amended Counterclaims.

Northern Valley Communications L.L.C. and Sancom, Inc. v. MCI Communications Services, Inc. d/b/a Verizon Business Services, Docket No. 1:07-cv-01016 (consolidated with No. 1:07-cv-04106) (D.S.D.)

Verizon alleges generally that Northern Valley and Sancom violated § 201(b) of the federal Communications Act by engaging in "unjust and unreasonable practices by ... conspiring to artificially and exponentially increase the volume of long-distance phone traffic handled by Northern Valley and Sancom." (Answer as to Northern Valley ¶ 113; Answer as to Sancom ¶ 109).[11]

Sancom, Inc. v. Sprint Communications Company, Docket No. 4:07-cv-04107 (D. S.D.)

This case involves two types of companies that have conspired together to generate the charges at issue. Sancom is the first type of company, a local exchange carrier ("LEC") that delivers calls to local customers, Sancom has conspired with a second type of company ("Call Connection Company") that has established free or nearly free conference-calling, chat-line, or similar services that callers throughout the United States use to connect to other callers. Sancom and the Call Connection Companies collectively are engaged in unlawful schemes to bill Sprint (along with other carriers) for charges Sprint neither expressly not implicitly agreed to pay because the charges are not authorized under applicable tariffs. The scam, which is commonly referred to as "traffic pumping," has two components.

Northern Valley Communications L.L.C. v. Sprint Communications Company, Docket No. 1:08-cv-01003 (D. S.D.)

The agreements reached between Northern Valley and one or more of the Call Connection Companies constitute agreements to take unlawful actions. The agreements between

[11] Subsequent to the filing of the Answers, Northern Valley's and Sancom's Complaint, and Verizon's related Counterclaims, were dismissed pursuant to a joint stipulation of dismissal. Verizon is still litigating the case as a counterclaimant against several counterdefendants.

Northern Valley and one or more of the Call Connection Companies constitute a civil conspiracy or conspiracies, and Northern Valley and the Call Connection Companies are liable for the harm caused by the unlawful acts taken in furtherance of the conspiracy. These acts include the advertising of the free calling services, the provision of kickbacks, and the billing of access charges on traffic for which no access charges were due.

Sancom, Inc. v. AT&T Corp., Docket No. 4:08-cv-04211 (D. S.D.)

AT&T alleges generally that Sancom violated 47 U.S.C. § 201(b) by engaging in "unjust and unreasonable practices in connection with its provision of interstate communications services" by "knowingly charg[ing] AT&T ... for terminating switched access services pursuant to its tariff for long distance calls to the numbers advertised by the [free call providers] with which [Sancom] had a business relationship." (Answer ¶¶ 46-47).

Northern Valley Communications L.L.C. v. XO Communications Services, Inc., Docket No. 1:09-cv-01002 (D. S.D.)

This collection action is still in its initial motions stage, and XO has only filed a Motion to Dismiss, and has not filed an Answer or Counterclaims to date. However, the complaint involves the collection of access charges for calls made to conference operators and other service providers, and so can be anticipated to address issues identical to the other collection actions described in these Comments.

Northern Valley Communications L.L.C. v. AT&T Corp., Docket No. 1:09-cv-01003 (D. S.D.)

AT&T alleges generally that Northern Valley violated 47 U.S.C. § 201(b) by engaging in "unjust and unreasonable practices in connection with its provision of interstate communications services" by "knowingly charg[ing] AT&T ... for terminating switched access services pursuant to its tariff for long distance calls to the numbers advertised by the [free call providers] with which [Northern Valley] had a business relationship." (Answer ¶¶ 46-47).

Northern Valley Communications L.L.C. v. Qwest Communications Corporation, Docket No. 1:09-cv-01004 (D. S.D.)

This collection action is still in the pleadings stage, and Qwest has only filed a Motion to Dismiss, and has not filed an Answer or Counterclaims to date. However, the complaint involves the collection of access charges for calls made to conference operators and other service providers, and so can be anticipated to address issues identical to the other collection actions described in these Comments.

4. Federal District of Minnesota

AT&T Corp. v. Tekstar Communications, No. 07-cv-02563 (D. Minn. July 16, 2007).

AT&T's Complaint states that:

> Finally, on information and belief, Tekstar is routing these calls through the service area of its affiliate East Otter Tail in a manner designed to inflate the transport charges that Tekstar bills AT&T in connection with these calls in violation of 47 U.S.C. § 201(b). The FCC has held that the creation of a CLEC to obtain revenues that could not be collected by the existing carrier constitutes a "sham" in "violation of section 201(b) of the Act." Total Telecomms. Servs., Inc., 16 FCC Rcd. 5726, ¶ 16 (2001); *see also id.* (where an entity is created as a "sham ... to extract access charges from [long-distance carriers] ... that artifice constitutes an unreasonable practice in connection with the provision of access service in violation of section 201(b) of the Act").

Tekstar Communications, Inc. v. Sprint Communications Company L.P., No. 08-cv-1130 (D. Minn. June 11, 2008)

The Sprint Answer and Counterclaim states that:

> When Sprint customers from all over the country call the advertised phone number to make their calls, Tekstar then bills Sprint the inflated switched access service charge to deliver its traffic to the international calling platform, chat line platform, or other service, even though Tekstar is not, in fact, providing switched access service and none of the parties who are communicating are end-user customers residing in Tekstar's territory. Tekstar bills so much in inflated switched access service charges through this scam that it is able to kick back a substantial portion of the monies received to its unscrupulous business partners.

Sprint Answer and Counterclaims at 5.

5. Federal District of Utah

Beehive Telephone Co., Inc. and Beehive Telephone Co. of Nevada, Inc. v. Sprint Communications Company, L.P., No. 2:08-cv-00380 (D. Utah, Sept. 15, 2008).

Sprint, in its Answer, Counterclaims and Third Party Complaint states as follows: "[All American] is a sham entity operated directly or indirectly by Beehive solely for the purpose of extracting exorbitantly high access charges for traffic to Call Connection Companies [chat line operators] . . . . [All American's and Beehive's] access charges assessed to Sprint . . . constitute an unreasonable practice pursuant to 47 U.S.C. § 201(b)." Sprint Answer at 43.

B. The Tekstar Case Has Been Referred to the Commission In Its Entirety

The judge in the pending collection action by Tekstar against AT&T in Federal District Court for the District of Minnesota recently referred that action, in its entirety, to the Commission. In doing so, Judge Ericksen stated that the plethora of collection actions and complaints relating to "access stimulation" has reached the point that, without guidance from the Commission, the risk of contradictory decisions – and the commensurate waste of judicial and party resources – has grown to an unacceptable level:

> The Court concludes that the potential for inconsistent or contradictory rulings is great in this case because the FCC currently has under consideration several different matters that address the same or similar issues. . . . The Court further concludes that resolution of the present [collection] action would require consideration of matters best entrusted in the first instance to the FCC's expertise and experience.[12]

All of these cases raise the same "sham entity" claim that has been referred to this Commission in the SDNY referral. Moreover, all of these cases also deal with the broader complaints against, and defenses to, "access stimulation" that are incorporated into the IUB adopted findings. It simply makes no sense for the Commission to address the IUB's findings without at the same time providing guidance on the same issues to these federal courts.

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[12] Judge Joan N. Ericksen, *Tekstar Communications, Inc. v. Sprint Communications Co. L.P.,* Civil No. 08-1130 (D. Minn.) (July 15, 2009).

III. THE COMMISSION SHOULD RECONFIRM THE CURRENT STATE OF THE LAW: THAT COMMERCIAL AGREEMENTS BETWEEN LECS AND CONFERENCE AND "CHAT LINE" OPERATORS ARE NOT UNLAWFUL, AND THAT IXC SELF-HELP VIOLATES THE COMMUNICATIONS ACT

The Great Lakes Petition and the open rulemaking proceeding in WC Docket No. 09-152, provide the Commission with the opportunity to provide the guidance required by both state regulatory commissions and the federal district courts. As discussed below, the Commission should issue the Declaratory Ruling requested by Great Lakes and Superior, and should expand the scope of that Ruling to respond to the SDNY Court and Minnesota District Court referrals. To do so, the Commission need only confirm the status of existing law.

A. THE COMMISSION HAS BROAD DISCRETION IN CHOOSING THE METHOD OF RESPONDING TO JUDICIAL REFERRALS, AND ROUTINELY USES DECLARATORY RULINGS TO DO SO

The Commission has broad discretion in choosing how it will respond to a primary jurisdiction referral – the Commission may respond by initiating an Informal Complaint, a Formal Complaint, or by issuing a Declaratory Ruling. The Commission has routinely employed Declaratory Rulings to respond to primary jurisdiction referrals.[13] In a 2003 Order, the Commission noted its approach to this issue:

> The Commission has broad discretion under the Administrative Procedure Act and Commission rules to decide whether a declaratory ruling is necessary to "terminate a controversy or remove uncertainty." When, as here, a petition for declaratory ruling derives from a primary jurisdiction referral, the Commission will seek, in exercising its discretion, to resolve issues arising under the Act that are necessary to assist the referring court.[14]

The Commission has used this judgment consistently to employ Declaratory Rulings to

[13] *E.g., Pleading Cycle Established for TON Services, Inc.*, 23 FCC Rcd 7862 (2008); *Joint Petition for Declaratory Ruling on the Assignment of Accounts (Traffic) Without the Associated CSTP II Plans Under AT&T Tariff F.C.C. No. 2*, 22 FCC Rcd 300 (2007).

[14] *Joint Petition for Declaratory Ruling on the Assignment of Accounts (Traffic) Without the Associated CSTP II Plans Under AT&T Tariff F.C.C. No. 2*, 18 FCC Rcd 21813, 21823 ¶ 15 (2003).

resolve matters in cases similar to the instant dispute. In 2001, the Commission used this vehicle to respond to a referral from the Federal District Court for the Eastern District of Virginia in a case that – similar to the instant dispute – involved multiple IXCs and CLECs across the country in an access collection action.[15] Moreover, the Commission chose the form of a Declaratory Ruling when it addressed widespread call blocking conducted by AT&T and other IXCs against rural LECs, which arose out of the same facts as the *Collection Action* and the AT&T Informal Complaint, which are the subject of the Great Lakes Petition.[16] While this action was not in response to a court referral, but rather taken on the Commission's own motion, the Commission's choice of a Declaratory Ruling was intended to clarify the law by ending a highly controversial practice that was affecting carriers and their customers on an industry-wide basis. Just as with the Call Blocking Declaratory Ruling, the Commission again needs to provide regulatory certainty on an industry-wide basis, and the Declaratory Ruling sought by the Great Lakes Petition is only effective means of doing so.

B. THE COMMISSION MUST USE THE GREAT LAKES PETITION AND DOCKET NO. 09-152 TO ISSUE A BROAD DECLARATORY RULING THAT RECONFIRMS THE CURRENT STATE OF THE LAW, AND PROVIDES THE NECESSARY GUIDANCE TO THE IUB, THE SDNY COURT, AND OTHER COURTS HEARING IDENTICAL ISSUES

The Commission can provide the requisite guidance to the IUB, to other state regulatory bodies, and to the federal courts by issuing a Declaratory Ruling that does the following:

- As per the Great Lakes Petition, the Commission should declare that:
  - The Commission has exclusive jurisdiction over interstate and international telecommunications, VoIP and other IP-based services, and telephone number allocation.
  - The Commission has exclusive jurisdiction in matters of tariff interpretation in cases where the language of federal and state tariffs is essentially the same.

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[15] *AT&T and Sprint Petitions for Declaratory Ruling on CLEC Access Charge Issues,* 17 FCC Rcd 19158 (2001). That ruling was later vacated by the D.C. Circuit Court of Appeals, but the Commission's choice of a Declaratory ruling as a means of bringing certainty to the industry was not contested.

[16] *Establishing Just and Reasonable Rates for Local Exchange Carriers, Call Blocking by Carriers*, 22 FCC Rcd 11629 (2007).

- The Commission has exclusive jurisdiction in cases in which it is impossible to differentiate interstate and intrastate traffic.

The Commission should also expand its Declaratory Ruling by doing the following:

- Declare that, in opening WC Docket No. 07-135, the Commission has occupied the field regarding the development of potential new rules that may apply to "access stimulation" traffic. Such rules, if adopted, will have prospective effect only.

- Declare that the Commissions' prior decisions in the *Jefferson, Frontier and Beehive* cases are good law and binding precedent.

- Declare that the Commission's ruling in the *Farmers & Merchants* case is final and binding law, unless and until the Commission issues a subsequent order on reconsideration.
    - The Commission has no obligation to issue a further order in that case, but if it chooses not to, it should confirm that fact in order to provide certainty to the federal district courts.
    - If it is planning to issue a further order, it should do so without additional delay.

- Declare that there are not now, and never have been, *per se* rules against "access stimulation," the sharing of access revenues, or cross-ownership between LECs and conference and/or chat-line operators.

- Confirm the Commission's findings – issued consistently over three decades – that self-help refusals to pay access charges violate Sections 201, 203 and other provisions of the Communications Act.[17]
    - Confirm the Commission's longstanding "pay and complain" rule, stating that parties wishing to contest payment of tariffed rates must first pay the charges in question, and then pursue the appropriate form of relief from the Commission.[18]

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[17] *E.g., APCC Services, Inc. et al. v. Network IP, LLC et al., 20 FCC Rcd 2073 (2005); Bell Atlantic – Delaware v. Frontier Commc'ns Servs., Inc.* 14 FCC Rcd 16050 (1999), aff'd 15 FCC Rcd 7475 (2000); *MGC Commc'ns, Inc. v. AT&T Corp*, 14 FCC Rcd 11647 (1999), *aff'd*, 15 FCC Rcd. 308 (1999); *Communique Telecommunications, Inc. DBA Logicall*, 10 FCC Rcd 10399, 10405 ¶ 36 (1995); *Business WATS, Inc., v. A.T.&T. Co.*, 7 FCC Rcd 7942 ¶ 2 (1989); *Tel-Central of Jefferson City, Missouri, Inc. v. United Tel. of Missouri, Inc.*, 4 FCC Rcd 8338, 8339 ¶ 9 (1989); *MCI Telecomms. Corp., American Tel. and Tel. Co. and the Pacific Tel. and Tel. Co.*, 62 FCC 2d 703 (1976).

[18] "The Commission previously has stated that a customer, even a competitor, is not entitled to the self-help measure of withholding payment for tariffed services duly performed but should first pay, under protest, the amount allegedly due and then seek redress if such amount was not proper under the carrier's applicable tariffed charges and regulations." *Business WATS, Inc., v. A.T.&T. Co.*, 7 FCC Rcd 7942 ¶ 2 (1989), *citing MCI Telecommunications Corporation, American Telephone and Telegraph Company and the Pacific Telephone and Telegraph Company, 62 FCC 2d 703 ¶ 6 (1976). See also, National Communications Ass'n. v. A.T.& T. Co.*, No. 93 CIV. 3707, 2001 WL 99856 (S.D.N.Y. Feb. 5, 2001), citing both cases.

IV. CONCLUSION

For the reasons discussed above, All American Telephone Company, Inc. supports the Great Lakes and Superior Petition for Declaratory Ruling. In addition, All American requests that the Commission respond to the referral of the "sham entity" question referred by the Federal District Court for the Southern District of New York by issuing a Declaratory Ruling, as opposed to conducting yet another ineffective and dilatory Formal Complaint. For considerations of regulatory efficiency and to provide guidance to the industry, state regulators and the courts, the Commission should address all related issues in a single Declaratory Ruling of industry-wide application.

Respectfully submitted,

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Counsel to All American Telephone Co., Inc.

Dated: September 21, 2009

CERTIFICATE OF SERVICE

I, Michele Depasse, do hereby certify that the foregoing **COMMMENTS OF ALL AMERICAN TELEPHONE COMPANY, INC. SUPPORTING THE PETITION FOR DECLARATORY RULING FILED BY GREAT LAKES COMMUNICATIONS AND SUPERIOR TELEPHONE** was sent via email on this 21st day of September 2009 to the following:

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RPP/348495.1

ATTACHMENT 1

[AT&T Answer to the SDNY *Collection Action* Complaint]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALL AMERICAN TELEPHONE COMPANY, INC., et al.,	:	07 CV 861 (WHP) ECF Case
Plaintiffs,	:	
v.	:	
AT&T CORP.,	:	
Defendant.	:	

ANSWER AND AMENDED COUNTERCLAIMS OF DEFENDANT AT&T CORP. TO PLAINTIFFS' FIRST AMENDED COMPLAINT

Defendant AT&T Corp. ("AT&T") by its undersigned counsel, Sidley Austin LLP, as for its answer and defenses to Plaintiffs' First Amended Complaint ("Complaint"), dated March 7, 2007, states as follows:

AT&T denies Plaintiffs' prayer for relief, as well as any matters contained in the headings or any text that is not contained in a numbered paragraph, none of which constitute a proper allegation.

1. AT&T denies the allegations of paragraph 1 of the Complaint.

2. To the extent the allegations in paragraph 2 of the Complaint purport to characterize rules, regulations, and orders of the Federal Communications Commission ("FCC"), federal and state statutes, regulatory requirements of the Iowa Utilities Board ("IUB"), and the "filed rate doctrine," AT&T respectfully refers the Court to such rules, regulations and orders of the FCC, federal and state statutes, regulatory requirements of the IUB, and the "filed rate doctrine" for an accurate and complete statement of their contents, and AT&T denies all

inconsistent allegations. To the extent the allegations in paragraph 2 of the Complaint state conclusions of law. AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 2 of the Complaint.

3. AT&T admits that the Court has subject matter jurisdiction over this action. AT&T further states that Plaintiffs' claims constitute compulsory counterclaims that should properly be heard in *AT&T Corp. v. Superior Tel. Cooperative et al.*, No. 4:07-cv-43-JEG-CFB (filed S.D. Iowa Jan. 29, 2007) (hereinafter, the "Iowa Action") (attached as Exhibit A). AT&T denies all remaining allegations in paragraph 3 of the Complaint.

4. To the extent the allegations in paragraph 4 of the Complaint purport to characterize rules, regulations, orders, and decisions of the FCC, AT&T respectfully refers the Court to such rules, regulations and orders of the FCC for an accurate and complete statement of their content, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 4 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 4 of the Complaint.

5. AT&T admits that it may be found in the Southern District of New York and asserts that Plaintiffs' claims constitute compulsory counterclaims that should properly be heard in the Iowa Action. AT&T denies all remaining allegations in paragraph 5 of the Complaint.

6. Upon information and belief, AT&T admits that All American Telephone Company, Inc. ("All American") is a Nevada corporation with its principal place of business in Las Vegas, Nevada and that All American is a CLEC. AT&T lacks knowledge and information

sufficient to form a belief as to the remainder of paragraph 6 of the Complaint, and therefore AT&T denies all remaining allegations in paragraph 6 of the Complaint.

7. Upon information and belief, AT&T admits that Chase Com ("Chase Com") is a California corporation with its principal place of business in Santa Barbara, California and that Chase Com is a CLEC. AT&T lacks knowledge and information sufficient to form a belief as to the remainder of paragraph 7 of the Complaint, and therefore AT&T denies all remaining allegations in paragraph 7 of the Complaint.

8. Upon information and belief, AT&T admits that e-Pinnacle Communications, Inc. ("e-Pinnacle") is a Utah corporation with its principal place of business in Provo, Utah and that e-Pinnacle is a CLEC. AT&T lacks knowledge and information sufficient to form a belief as to the remainder of paragraph 8 of the Complaint, and therefore AT&T denies all remaining allegations in paragraph 8 of the Complaint.

9. Upon information and belief, AT&T admits that Great Lakes Communication Corp. ("Great Lakes") is an Iowa corporation with its principal place of business in Spencer, Iowa and that Great Lakes is a CLEC. AT&T lacks knowledge and information sufficient to form a belief as to the remainder of paragraph 9 of the Complaint, and therefore AT&T denies all remaining allegations in paragraph 9 of the Complaint.

10. AT&T admits that AT&T Corp. is a New York corporation with its principal place of business in Bedminster, New Jersey. AT&T admits that it provides services in this judicial district. AT&T admits that it has common carrier lines that run through this judicial district. AT&T admits that it is an interexchange carrier ("IXC"). AT&T admits that it is a common carrier with respect to the provision of certain, but not all, services. To the extent the allegations in paragraph 10 of the Complaint state conclusions of law, AT&T denies the

allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 10 of the Complaint.

11. AT&T lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Complaint that Plaintiffs are telecommunications common carriers and that Plaintiffs' service offerings are subject to the jurisdiction of the FCC. AT&T admits that it is a common carrier with respect to the provision of certain, but not all, services and that certain of AT&T's offerings are subject to FCC jurisdiction. To the extent the allegations in paragraph 11 state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 11 of the Complaint.

12. On information and belief, AT&T admits that Plaintiffs are competitive local exchange carriers ("CLECs") that provide local and long distance telephone services in their territory. AT&T denies the remaining allegations in paragraph 12 of the Complaint.

13. AT&T admits that it is and has been a provider of long-distance telephone service. AT&T admits that it is and has been an IXC. AT&T admits that for many customers it provides and has provided a service that enables a customer in one locality to make a telephone call to another person in a distant location. AT&T admits that it provides and has provided an interexchange service to certain customers. AT&T admits that interexchange service generally includes long-distance service that involves connecting a calling party in one local service area, or telephone exchange area, with a called party in another local telephone exchange area. AT&T denies all remaining allegations in paragraph 13 of the Complaint.

14. AT&T admits that affiliates of AT&T, but not AT&T Corp. itself, provide local telephone service in some areas and that in some areas affiliates of AT&T are classified as

incumbent local exchange carriers ("ILECs"). To the extent the allegations in paragraph 14 of the Complaint purport to characterize Plaintiffs' Complaint, AT&T respectfully refers the Court to the Complaint for an accurate and complete statement of its contents, and AT&T denies all inconsistent allegations. AT&T denies all remaining allegations in paragraph 14 of the Complaint.

15. AT&T admits its long-distance network does not extend to all end-user customers' homes or businesses. AT&T admits that local exchange carriers can have facilities that connect to end users' homes or businesses. AT&T lacks knowledge and information sufficient to form a belief as to the allegations about Plaintiffs' and other local exchange carriers' networks and services, and therefore AT&T denies all such allegations. To the extent the allegations in paragraph 15 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 15 of the Complaint.

16. To the extent the allegations in paragraph 16 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 16 of the Complaint.

17. To the extent the allegations in paragraph 17 of the Complaint purport to characterize rules, regulations and orders of the FCC, AT&T respectfully refers the Court to such rules, regulations and orders of the FCC for an accurate and complete statement of their content, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 17 state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law

are for the Court to reach. AT&T denies all remaining allegations in paragraph 17 of the Complaint.

18. To the extent the allegations in paragraph 18 of the Complaint purport to characterize rules, regulations and orders of the FCC, AT&T respectfully refers the Court to such rules, regulations and orders of the FCC for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 18 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 18 of the Complaint.

19. To the extent the allegations in paragraph 19 of the Complaint purport to characterize rules, regulations and orders of the FCC, AT&T respectfully refers the Court to such rules, regulations and orders of the FCC for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 19 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 19 of the Complaint.

20. To the extent the allegations in paragraph 20 state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T admits that the IUB does not prescribe the access rates for CLECs. AT&T denies all remaining allegations in paragraph 20 of the Complaint.

21. AT&T admits that Great Lakes has purported to concur in a tariff maintained by the Iowa Telecommunications Association ("ITA"). AT&T lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21 of the

Complaint that such conduct is a common practice in Iowa, that the ITA boasts 153 incumbent and competitive telecommunications carriers within Iowa as active members, that many of these 153 members has concurred in the ITA tariff, and that the ITA tariff has been effective in Iowa since the 1980s, and therefore AT&T denies such allegations. To the extent the allegations in paragraph 21 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 21 of the Complaint.

22. To the extent the allegations in paragraph 22 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 22 of the Complaint.

23. To the extent the allegations in paragraph 23 of the Complaint purport to characterize decisions of federal courts, AT&T respectfully refers the Court to those decisions for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 23 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 23 of the Complaint.

24. To the extent the allegations in paragraph 24 of the Complaint purport to characterize decisions of federal courts, AT&T respectfully refers the Court to those decisions for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 24 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 24 of the Complaint.

25. To the extent the allegations in paragraph 25 of the Complaint purport to characterize rules, regulations, or decision of the FCC, AT&T respectfully refers the Court to such rules, regulations, or decisions for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 25 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 25 of the Complaint.

26. To the extent the allegations in paragraph 26 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 26 of the Complaint.

27. AT&T denies the allegations of paragraph 27 of the Complaint.

28. AT&T admits that it stopped paying for MGC Communications, Inc.'s ("MGC") access services, which were priced at 8.5 cents per minute, a rate that the FCC later found to be unjust and unreasonable. AT&T admits that MGC filed a formal complaint against AT&T at the FCC. AT&T admits that a dispute relating to access charges existed between AT&T and MGC, and that prior to the dispute AT&T had paid amounts to MGC for services purportedly provided to AT&T. AT&T denies all remaining allegations in paragraph 28 of the Complaint.

29. To the extent the allegations in paragraph 29 of the Complaint purport to characterize rules, regulations, or orders of the FCC, AT&T respectfully refers the Court to such rules, regulations or orders for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 29 of the

Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 29 of the Complaint.

30. AT&T admits that it sought reconsideration of the Common Carrier Bureau's decision. To the extent the allegations in paragraph 30 of the Complaint purport to characterize rules, regulations, or orders of the FCC, AT&T respectfully refers the Court to such rules, regulations and orders for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 30 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 30 of the Complaint.

31. AT&T admits that it litigated a number of access charge disputes in federal courts in the years 1998 through 2001. To the extent the allegations in paragraph 31 of the Complaint purport to characterize rules, regulations, or orders of the FCC, AT&T respectfully refers the Court to such rules, regulations, and orders for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 31 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 31 of the Complaint.

32. To the extent the allegations in paragraph 32 of the Complaint purport to characterize court decisions, AT&T respectfully refers the Court to such decisions for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 32 of the Complaint state conclusions of law, AT&T

denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 32 of the Complaint.

33. To the extent the allegations in paragraph 33 of the Complaint purport to characterize a court decision, AT&T respectfully refers the Court to that decision for an accurate and complete statement of its contents, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 33 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 33 of the Complaint.

34. To the extent the allegations in paragraph 34 of the Complaint purport to characterize rules, regulations, or orders of the FCC, AT&T respectfully refers the Court to such rules, regulations, and orders for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 34 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 34 of the Complaint.

35. AT&T admits that all of the competitive local exchange carriers ("CLECs") that were plaintiffs in the court actions in the Federal District Courts of the District of Columbia and the Eastern District of Virginia settled with AT&T. AT&T lacks knowledge or information sufficient to form a belief as to the remainder of paragraph 35 of the Complaint, and therefore AT&T denies all remaining allegations in paragraph 35 of the Complaint.

36. To the extent the allegations in paragraph 36 of the Complaint purport to characterize a federal court decision or a provision of the Communications Act, AT&T respectfully refers the Court to that decisions and provisions of the Communications Act for an

accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 36 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 36 of the Complaint.

37. To the extent the allegations in paragraph 37 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 37 of the Complaint.

38. To the extent the allegations in paragraph 38 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T lacks knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 38 of the Complaint.

39. To the extent the allegations in paragraph 39 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 39 of the Complaint.

40. To the extent the allegations in paragraph 40 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 40 of the Complaint.

41. To the extent the allegations in paragraph 41 of the Complaint purport to characterize Plaintiffs' tariffs, AT&T respectfully refers the Court to such tariffs for an accurate and complete statement of their content, and AT&T denies all inconsistent allegations. AT&T

admits that Plaintiffs have submitted invoices to AT&T that purport to seek payment for access charges. AT&T lacks sufficient information to form a belief as to whether Plaintiffs provided access services. AT&T asserts, however, that Plaintiffs did not provide access services in connection with the overwhelming majority of AT&T traffic delivered to Plaintiffs for which Plaintiffs billed AT&T access charges. Plaintiffs improperly treated traffic that was not access traffic as access traffic. AT&T denies all remaining allegations in paragraph 41 of the Complaint.

42. AT&T admits that it has disputed and not paid certain of Plaintiffs' bills. AT&T lacks sufficient information to form a belief as to whether Plaintiffs provided or are providing access services. AT&T asserts, however, that Plaintiffs did not provide access services in connection with the overwhelming majority of AT&T traffic delivered to Plaintiffs for which Plaintiffs billed AT&T access charges. Plaintiffs improperly treated traffic that was not access traffic as access traffic. AT&T denies all remaining allegations in paragraph 42 of the Complaint.

43. AT&T admits that All American filed a tariff with the FCC that purports to have become effective on or about July 1, 2005. To the extent the allegations in paragraph 43 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 43 of the Complaint.

44. To the extent that the allegations in paragraph 44 purport to characterize an All American tariff, AT&T respectfully refers the Court to such tariff itself for an accurate and complete statement of its content, and AT&T denies all inconsistent allegations. AT&T admits that All American has billed AT&T for purported interstate access charges. AT&T lacks

sufficient information to form a belief as to whether All American provided interstate access services. AT&T asserts. however. that All American did not provide interstate access services in connection with the overwhelming majority of AT&T traffic delivered to All American for which All American billed AT&T interstate access charges. All American improperly treated traffic that was not interstate access traffic as interstate access traffic. AT&T denies all remaining allegations in paragraph 44 of the Complaint.

45. AT&T admits that it paid certain of All American's bills. To the extent that the allegations in paragraph 45 purport to characterize an All American tariff, AT&T respectfully refers to the Court to such tariff itself for an accurate and complete statement of its content. and AT&T denies all inconsistent allegations. AT&T denies all remaining allegations in paragraph 45 of the Complaint.

46. AT&T admits that it has disputed and not paid certain of All American's bills. To the extent the allegations in paragraph 46 of the Complaint purport to characterize an All American FCC tariff. AT&T respectfully refers the Court to such tariff for an accurate and complete statement of its content. and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 46 state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 46 of the Complaint.

47. AT&T lacks knowledge and information sufficient to form a belief as to the allegation that All American sent letters on or about October 2, 2006 and November 10, 2006, and therefore AT&T denies all such allegations. To the extent the allegations in paragraph 47 of the Complaint purport to characterize the content of those letters, AT&T respectfully refers the Court to the letters themselves for an accurate and complete statement of their content, and

AT&T denies all inconsistent allegations. AT&T denies all remaining allegations in paragraph 47.

48. AT&T denies the allegations of paragraph 48 of the Complaint.

49. AT&T denies the allegations of paragraph 49 of the Complaint.

50. AT&T admits that Chase Com filed a tariff with the FCC that purports to have become effective on or about October 13, 2005. To the extent the allegations in paragraph 50 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 50 of the Complaint.

51. To the extent that the allegations in paragraph 51 purport to characterize a Chase Com tariff, AT&T respectfully refers the Court to such tariff itself for an accurate and complete statement of its content, and AT&T denies all inconsistent allegations. AT&T admits that Chase Com has billed AT&T for purported interstate access charges. AT&T lacks sufficient information to form a belief as to whether Chase Com provided interstate access services. AT&T asserts, however, that Chase Com did not provide interstate access services in connection with the overwhelming majority of AT&T traffic delivered to Chase Com for which Chase Com billed AT&T interstate access charges. Chase Com improperly treated traffic that was not interstate access traffic as interstate access traffic. AT&T denies all remaining allegations in paragraph 51 of the Complaint.

52. AT&T admits that it has disputed and not paid certain of Chase Com's bills. To the extent the allegations in paragraph 52 of the Complaint purport to characterize a Chase Com FCC tariff, AT&T respectfully refers the Court to such tariff for an accurate and complete statement of its content, and AT&T denies all inconsistent allegations. To the extent

the allegations in paragraph 52 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 52 of the Complaint.

53. AT&T lacks knowledge and information sufficient to form a belief as to the allegation that Chase Com sent letters on or about October 2, 2006 and November 10, 2006, and therefore AT&T denies all such allegations. To the extent the allegations in paragraph 53 of the Complaint purport to characterize the content of those letters, AT&T respectfully refers the Court to the letters themselves for an accurate and complete statement of their content, and AT&T denies all inconsistent allegations. AT&T denies all remaining allegations in paragraph 53.

54. AT&T denies the allegations of paragraph 54 of the Complaint.

55. AT&T denies the allegations of paragraph 55 of the Complaint.

56. To the extent the allegations in paragraph 56 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T lacks sufficient information to form a belief as to whether e-Pinnacle filed a tariff with the FCC on or about October 12, 2005 or that such tariff became effective on October 13, 2005, and therefore AT&T denies all such allegations. AT&T denies all remaining allegations in paragraph 56 of the Complaint.

57. To the extent that the allegations in paragraph 57 purport to characterize an e-Pinnacle tariff, AT&T respectfully refers the Court to such tariff itself for an accurate and complete statement of its content, and AT&T denies all inconsistent allegations. AT&T admits that e-Pinnacle has billed AT&T for purported interstate access charges. AT&T lacks sufficient information to form a belief as to whether e-Pinnacle provided interstate access services. AT&T

asserts, however, that e-Pinnacle did not provide interstate access services in connection with the overwhelming majority of AT&T traffic delivered to e-Pinnacle for which e-Pinnacle billed AT&T interstate access charges. e-Pinnacle improperly treated traffic that was not interstate access traffic as interstate access traffic. AT&T denies all remaining allegations in paragraph 57 of the Complaint.

58. AT&T admits that it paid certain of e-Pinnacle's bills. To the extent that the allegations in paragraph 58 purport to characterize an e-Pinnacle tariff, AT&T respectfully refers the Court to such tariff itself for an accurate and complete statement of its content, and AT&T denies all inconsistent allegations. AT&T denies all remaining allegations in paragraph 58 of the Complaint.

59. AT&T admits that it has disputed and not paid certain of e-Pinnacle's bills. To the extent the allegations in paragraph 59 of the Complaint purport to characterize an e-Pinnacle FCC tariff, AT&T respectfully refers the Court to such tariff for an accurate and complete statement of its content, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 59 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 59 of the Complaint.

60. AT&T lacks knowledge and information sufficient to form a belief as to the allegation that e-Pinnacle sent letters on or about October 2, 2006 and November 10, 2006, and therefore AT&T denies all such allegations. To the extent the allegations in paragraph 60 of the Complaint purport to characterize the content of those letters, AT&T respectfully refers the Court to the letters themselves for an accurate and complete statement of their content, and

AT&T denies all inconsistent allegations. AT&T denies all remaining allegations in paragraph 60.

61. AT&T denies the allegations of paragraph 61 of the Complaint.

62. AT&T denies the allegations of paragraph 62 of the Complaint.

63. AT&T admits that Great Lakes filed a tariff with the FCC that purports to have become effective on or about September 2, 2005. To the extent the allegations in paragraph 63 of the Complaint state conclusions of law. AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 63 of the Complaint.

64. AT&T lacks sufficient information to form a belief as to whether Great Lakes has a certificate of public interest and necessity granted by the IUB. To the extent the allegations in paragraph 64 of the Complaint purport to characterize a certificate of public interest and necessity, AT&T respectfully refers the Court to that certificate of public interest and necessity for an accurate and complete statement of its contents, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 64 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 64 of the Complaint.

65. AT&T admits that Great Lakes has purported to concur in a tariff maintained by the ITA. To the extent the allegations in paragraph 65 of the Complaint purport to characterize the rules of the IUB and contents of a filed notice, AT&T respectfully refers the Court to the rules of the IUB and such filed notice for an accurate and complete statement of its content, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph

65 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 65 of the Complaint.

66. To the extent that the allegations in paragraph 66 of the Complaint purport to characterize a Great Lakes tariff, AT&T respectfully refers the Court to such tariff itself for an accurate and complete statement of its content, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 66 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T lacks sufficient information to form a belief as to whether Great Lakes provided intrastate exchange access services. AT&T asserts, however, that Great Lakes did not provide intrastate access services in connection with the overwhelming majority of AT&T traffic delivered to Great Lakes. AT&T denies all remaining allegations in paragraph 66 of the Complaint.

67. To the extent that the allegations in paragraph 67 purport to characterize a Great Lakes tariff, AT&T respectfully refers the Court to such tariffs themselves for an accurate and complete statement of their content, and AT&T denies all inconsistent allegations. AT&T admits that Great Lakes has billed AT&T for purported interstate and intrastate access charges. AT&T lacks sufficient information to form a belief as to whether Great Lakes provided such services. AT&T asserts, however, that Great Lakes did not provide interstate or intrastate access services in connection with the overwhelming majority of AT&T traffic delivered to Great Lakes for which Great Lakes billed AT&T interstate and intrastate access charges. Great Lakes improperly treated traffic that was not interstate or intrastate access traffic as interstate and intrastate access traffic. AT&T denies all remaining allegations in paragraph 67 of the Complaint.

68. AT&T admits that it paid certain of Great Lake's bills. To the extent that the allegations in paragraph 58 purport to characterize a Great Lakes tariff, AT&T respectfully refers the Court to such tariff itself for an accurate and complete statement of its content, and AT&T denies all inconsistent allegations. AT&T denies all remaining allegations in paragraph 68 of the Complaint.

69. AT&T admits that it has disputed and not paid certain of Great Lakes' bills. To the extent the allegations in paragraph 69 of the Complaint purport to characterize Great Lakes' FCC tariff or its Iowa state tariff, AT&T respectfully refers the Court to those tariffs for an accurate and complete statement of their content, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 69 state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 69 of the Complaint.

70. AT&T lacks knowledge and information sufficient to form a belief as to the allegation that Great Lakes sent letters on or about October 2, 2006 and November 10, 2006, and therefore AT&T denies all such allegations. To the extent the allegations in paragraph 70 of the Complaint purport to characterize the content of those letters, AT&T respectfully refers the Court to the letters themselves for an accurate and complete statement of their content, and AT&T denies all inconsistent allegations. AT&T denies all remaining allegations in paragraph 70.

71. AT&T denies the allegations of paragraph 71 of the Complaint.

72. AT&T denies the allegations of paragraph 72 of the Complaint.

73. AT&T repeats and realleges each and every response set forth in the foregoing paragraphs as if fully set forth herein.

74. AT&T lacks sufficient information to form a belief as to whether Plaintiffs provided interstate access services in connection with any AT&T traffic delivered to Plaintiffs. AT&T asserts, however, that Plaintiffs did not provide interstate access services in connection with the overwhelming majority of AT&T traffic delivered to Plaintiffs for which Plaintiffs billed AT&T interstate access charges. To the extent the allegations in paragraph 74 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations of paragraph 74 of the Complaint.

75. AT&T denies the allegations of paragraph 75 of the Complaint.

76. AT&T denies the allegations of paragraph 76 of the Complaint.

77. AT&T repeats and realleges each and every response set forth in the foregoing paragraphs as if fully set forth herein.

78. To the extent the allegations in paragraph 78 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations of paragraph 78 of the Complaint.

79. AT&T denies the allegations of paragraph 79 of the Complaint.

80. To the extent the allegations in paragraph 80 purport to characterize provisions of the Communications Act, AT&T respectfully refers the Court to the Act itself for an accurate and complete statement of its content, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 80 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 80 of the Complaint.

81. AT&T denies the allegations of paragraph 81 of the Complaint.

82. AT&T denies the allegations of paragraph 82 of the Complaint.

83. AT&T denies the allegations of paragraph 83 of the Complaint.

84. AT&T denies the allegations of paragraph 84 of the Complaint.

85. AT&T denies the allegations of paragraph 85 of the Complaint.

86. AT&T repeats and realleges each and every response set forth in the foregoing paragraphs as if fully set forth herein.

87. To the extent the allegations in paragraph 87 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations of paragraph 87 of the Complaint.

88. AT&T denies the allegations of paragraph 88 of the Complaint.

89. To the extent the allegations in paragraph 89 purport to characterize provisions of the Communications Act, AT&T respectfully refers the Court to the Act itself for an accurate and complete statement of its content, and AT&T denies all inconsistent allegations. To the extent the allegations in paragraph 89 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations in paragraph 89 of the Complaint.

90. AT&T denies the allegations of paragraph 90 of the Complaint.

91. AT&T denies the allegations of paragraph 91 of the Complaint.

92. AT&T denies the allegations of paragraph 92 of the Complaint.

93. AT&T denies the allegations of paragraph 93 of the Complaint.

94. AT&T repeats and realleges each and every response set forth in the foregoing paragraphs as if fully set forth herein.

95. AT&T lacks sufficient information to form a belief as to whether Plaintiff provided interstate access services in connection with any AT&T traffic delivered to Plaintiff. AT&T asserts, however, that Plaintiff did not provide interstate access services in connection with the overwhelming majority of AT&T traffic delivered to Plaintiff for which Plaintiff billed AT&T interstate access charges. To the extent the allegations in paragraph 95 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations of paragraph 95 of the Complaint.

96. AT&T denies the allegations of paragraph 96 of the Complaint.

97. AT&T denies the allegations of paragraph 97 of the Complaint.

98. AT&T repeats and realleges each and every response set forth in the foregoing paragraphs as if fully set forth herein.

99. To the extent the allegations in paragraph 99 of the Complaint state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies all remaining allegations of paragraph 99 of the Complaint.

100. AT&T denies the allegations of paragraph 100 of the Complaint.

101. To the extent the allegations in paragraph 101 purport to characterize provisions of the Iowa Code, AT&T respectfully refers the Court to the Iowa Code itself for an accurate and complete statement of its content, and AT&T denies all inconsistent allegations.

AT&T denies all remaining allegations in paragraph 101 of the Complaint. AT&T denies all remaining allegations in paragraph 101.

102. AT&T denies the allegations of paragraph 102 of the Complaint.

103. AT&T repeats and realleges each and every response set forth in the foregoing paragraphs as if fully set forth herein.

104. AT&T lacks sufficient information to form a belief as to whether Plaintiffs provided access services in connection with any AT&T traffic delivered to Plaintiffs. AT&T asserts, however, that Plaintiffs did not provide access services in connection with the overwhelming majority of AT&T traffic delivered to Plaintiffs for which Plaintiffs billed AT&T access charges. AT&T denies all remaining allegations of paragraph 104 of the Complaint.

105. AT&T lacks sufficient information to form a belief as to whether Plaintiffs provided access services in connection with any AT&T traffic delivered to Plaintiffs. AT&T asserts, however, that Plaintiffs did not provide access services in connection with the overwhelming majority of AT&T traffic delivered to Plaintiffs for which Plaintiffs billed AT&T access charges. AT&T denies all remaining allegations of paragraph 105 of the Complaint.

106. AT&T denies the allegations of paragraph 106 of the Complaint.

107. AT&T denies the allegations of paragraph 107 of the Complaint.

DEFENSES

AT&T Corp. asserts the following additional defenses without assuming the burden of proof on such defenses that would otherwise rest on the Plaintiffs and reserves its rights to assert additional defenses when, and if, appropriate.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Plaintiffs' claims are barred in whole or in part by their inequitable conduct and unclean hands.

THIRD DEFENSE

Plaintiffs may not obtain relief under any state or federal tariff because Plaintiffs are in violation of such tariffs.

FOURTH DEFENSE

Plaintiffs' claims for terminating access charges are barred because Plaintiffs did not provide such services.

FIFTH DEFENSE

Plaintiffs' claims are barred because they have engaged in ongoing violations of the Telecommunications Act, including, but not limited to, 47 U.S.C. §§ 201 and 203.

SIXTH DEFENSE

Plaintiffs' claim for quantum meruit is barred because Plaintiffs' purported right to recover proper and lawful access charges, if any, is governed by tariff.

SEVENTH DEFENSE

Plaintiffs' claims are barred because they are compulsory counterclaims, Fed. R. Civ. P. 13(a), that are subject to transfer to the Southern District of Iowa pursuant to 28 U.S.C. § 1404.

EIGHTH DEFENSE

Great Lakes' claims are barred because of its fraudulent conduct which has been set forth with particularity in paragraphs 58-65 of AT&T's counterclaims, which AT&T incorporates by reference.

Wherefore, AT&T requests that the Complaint be dismissed with prejudice, and that the Court enter judgment in its favor and against the Plaintiffs, award AT&T attorneys' fees, costs and expenses, and grant AT&T such further relief as is just and equitable.

AMENDED COUNTERCLAIMS OF AT&T

1. Pursuant to the Court's July 24, 2008 Memorandum & Order, Defendant AT&T Corp. ("AT&T") by its undersigned counsel, Sidley Austin LLP, for its counterclaims against All American, ChaseCom, and e-Pinnacle (collectively "Counterclaim Defendants") states as follows:

NATURE OF THE COUNTERCLAIMS

2. AT&T brings this Counterclaim seeking damages, a declaratory ruling, and other appropriate remedies to redress overcharges for services billed by Counterclaim Defendants to AT&T, purportedly under their filed tariffs, which the Counterclaim Defendants did not actually provide.

3. As described below, Counterclaim Defendants entered into business arrangements with "Free Calling Providers" or "FCPs" whereby the FCPs offered to the public various "free" telephone services – *e.g.*, pornographic chat, conferencing, and international calling – to persons who call telephone numbers controlled by the Counterclaim Defendants. These advertisements generated millions of minutes of calls over AT&T's long-distance network to the advertised telephone numbers. The Counterclaim Defendants then billed AT&T for a service contained in their tariffs called "terminating switched access service" for each minute associated with each such call, and then shared those revenues with the FCPs.

4. As explained below, however, Counterclaim Defendants have not, in fact, provided terminating switched access service under their tariffs to AT&T for such calls. To qualify as terminating switched access service under the Counterclaim Defendants' tariffs, the Counterclaim Defendants must use "common" facilities to "terminate" calls to an "end-user premises" in the local exchange served by the Counterclaim Defendants. On information and belief, the calls at issue here do not satisfy these requirements, and Counterclaim Defendants

thus have not provided the terminating switched access services for which they have billed AT&T.

5. As such, Counterclaim Defendants (i) have violated Section 203 of the Communications Act, 47 U.S.C. § 203, by charging for services in a manner that is inconsistent with their filed tariffs; (ii) have violated Section 201(b) of the Communications Act, 47 U.S.C. § 201(b), by engaging in the unjust and unreasonable practice of charging for services which they did not provide; (iii) have violated Section 201(b) of the Communications Act, 47 U.S.C. § 201(b), by creating "sham" entities solely for the purpose of seeking inflated access charges; (iv) have engaged in fraudulent conduct by billing AT&T for services that they did not provide; (v) have been unjustly enriched by seeking and obtaining charges from AT&T to which they were not and are not entitled; and (vi) have participated in a civil conspiracy with the FCPs to engage in such unlawful conduct. Accordingly, AT&T seeks appropriate relief for such unlawful conduct and a declaratory ruling to prevent such conduct in the future.

JURISDICTION AND VENUE

6. This Court has original jurisdiction over this action under 28 U.S.C. §§ 1331, 1337, and 47 U.S.C. § 207 because AT&T's claims arise under the federal Communications Act, a law of the United States. This Court has jurisdiction over AT&T's state law claims under 28 U.S.C. § 1332. In addition, this Court has supplemental jurisdiction over the state law claims asserted in this action under 28 U.S.C. § 1367(a). Finally, this Court has jurisdiction over AT&T's requests for declaratory relief under 28 U.S.C. §§ 2001 and 2202.

7. To the extent that venue is proper in this judicial district regarding the claims of the Complaint, venue is proper in this judicial district under 28 U.S.C. § 1391 as to AT&T's counterclaims against All American, ChaseCom and e-Pinnacle.

PARTIES

8. Defendant/Counterclaim Plaintiff AT&T is a New York corporation that provides communications and other services to U.S.-based and foreign-based customers and has its principal place of business in Bedminster, New Jersey. AT&T is a wholly-owned subsidiary of AT&T Inc.

9. Plaintiff/Counterclaim Defendant All American Telephone Company, Inc. ("All American"), upon information and belief, is a Nevada corporation with its principal place of business in Las Vegas, Nevada.

10. Plaintiff/Counterclaim Defendant ChaseCom ("ChaseCom"), upon information and belief, is a California corporation with its principal place of business in Santa Barbara, California.

11. Plaintiff/Counterclaim Defendant e-Pinnacle Communications, Inc. ("e-Pinnacle") upon information and belief, is a Utah corporation with its principal place of business in Provo, Utah.

COUNTERCLAIM DEFENDANTS' UNLAWFUL SCHEME

A. The Access Charge Regime Governing Domestic Long-Distance Calls.

12. Traditionally, telephone calls have been divided into local calls and long distance calls. Local calls are placed within a designated calling area, sometimes called an "exchange." An exchange is served by one or more local exchange carriers ("LECs"). LECs typically own or lease wires and switches used to initiate calls from and to complete telephone calls to their customers. Thus, when a caller calls a neighbor living down the street, that call originates and terminates within the same local exchange and the caller uses the local exchange service provided by the LEC in connection with that call.

13. There are two general types of LECs: "incumbent" local exchange carriers ("ILECs"), which are the traditional providers of local exchange services, and "competitive" local exchange carriers ("CLECs"), which are new entrants that offer local services in competition with ILECs.

14. Domestic long distance calls are carried from one local calling area (*i.e.*, local exchange) to another local calling area (*i.e.*, local exchange) either within the same state or between different states. Long distance carriers, also known as "interexchange carriers" or "IXCs," typically carry these types of calls from the originating exchange to the terminating exchange. Thus, when a Utah resident calls a friend in New York, the Utah resident must use a long distance service.

15. AT&T and its affiliates provide both local and long distance services. However, AT&T and its affiliates do not own local exchange facilities throughout the country. In those areas where AT&T does not operate local exchange facilities, AT&T typically uses "switched access services" to originate and terminate long-distance calls. The originating and terminating switched access services are provided by LECs that operate local exchange facilities in the areas where the calls originate and terminate.

16. For example, a long distance telephone call from an AT&T long distance customer in Albany, New York to someone in Provo, Utah, may be routed as follows: When the caller in Albany dials the phone number of the Provo resident, the call is first routed by a LEC in New York from the building where the caller is located to an AT&T "point of presence," which is a location where the LEC's local network connects to AT&T's long distance network. This LEC service is called "originating" switched access service, and the Albany LEC bills AT&T for that service. AT&T then carries the call over its long distance network to an AT&T point of

presence in Provo, where it hands the call off to a LEC that terminates the call to the called party in Provo. This LEC service is called "terminating" switched access service, and the Provo LEC bills AT&T for that service.

17. For switched access services, it is the long distance company's customers, not the long distance companies themselves, that choose their local exchange carriers. Consequently, once a long-distance customer chooses to take service from a particular LEC, the long-distance carrier that serves that customer must use the customer-chosen LEC's access services to complete calls to and from the long-distance carriers' customers. Thus, as a general matter, providers of terminating switched access services are the exclusive providers of such service to the customers they serve in their local calling areas, and AT&T has no choice as to the entity from whom it obtains terminating switched access service.

B. Counterclaim Defendants' Operate In Remote And Sparsely Populated Areas On The Utah-Nevada Border.

18. All three Counterclaim Defendants operate in remote and sparsely populated areas straddling the border of Nevada and Utah. However, none of the Counterclaim Defendants connect directly to AT&T's network point of presence for that area. Rather, Counterclaim Defendants connect indirectly to AT&T. The ILEC in the areas where Counterclaim Defendants operate is the Beehive Telephone Company ("Beehive"). Because the Counterclaim Defendants essentially operate behind Beehive's network with no direct connection between their facilities (if any) and AT&T's facilities, AT&T cannot determine precisely how the Counterclaim Defendants' facilities or networks are arranged or how they exchange traffic with Beehive, with any entities to which they route calls, or with other carriers.

19. The Counterclaim Defendants have filed federal tariffs containing the rates for terminating access services associated with long-distance calls to their customers. Those rates

are the same as the rates charged by Beehive, which has a long history of having excessive access rates. *See, e.g., AT&T Corp.* v. *Beehive Tel. Co.* 17 FCC Rcd. 11641, ¶ 5 (2002); *see also, e.g., Beehive Tel. Co., Inc.*, 14 FCC Rcd. 1224, ¶ 22 (1998); *Beehive Tel. Co., Inc.*, 13 FCC Rcd. 2736, ¶¶ 25-26 (1998).

20. Upon information and belief, Counterclaim Defendants were not formed to compete with Beehive in the provision of local exchange services in the rural Utah and Nevada territories in which they operate, and serve few, if any, residents or businesses in those territories.

21. Rather, upon information and belief, Counterclaim Defendants were formed as sham entities to enter into arrangements with FCPs for the purpose of engaging in the traffic pumping schemes discussed herein to extract inflated terminating switched access charges from AT&T and other long distance carriers.

C. Counterclaim Defendants' "Traffic Pumping" Schemes.

22. On information and belief, all three Counterclaim Defendants have undertaken business relationships with FCPs designed to exploit the Counterclaim Defendants' exclusive control over access to certain telephone numbers.

23. On information and belief, Counterclaim Defendants have entered into revenue sharing agreements with FCPs that promote, over the Internet and other media, a variety of "free" calling services,[1] such as pornographic and other chat lines, conference calling, and

[1] Although FCPs generally offer these services as "free" to the caller, FCPs sometimes require callers to pay a very small nominal fee. All such services are referred to herein as "free" services.

international calling.[2] The FCPs instruct callers to dial telephone numbers assigned to the FCPs by the Counterclaim Defendants, resulting in the calls being routed to local exchanges in Nevada, Utah, or other places. Once routed, however, the calls are not connected to any actual residents of these communities. Instead, they are routed to equipment owned by Counterclaim Defendants or the FCPs. For the free "chat" and conferencing services, the caller is connected via a bridge to other calls; for free international services, the call is sent to a foreign telephone number chosen by the caller.

24. Counterclaim Defendants bill AT&T and other long distance carriers for terminating access services for each minute of use of the "free" calling services – as though the calls were ordinary long distance calls placed to actual residents of Counterclaim Defendants' local exchanges. On information and belief, pursuant to revenue sharing arrangements, Counterclaim Defendants then kickback to the FCPs a portion of the access revenues which they collect from AT&T and other long distance carriers. As a result of these "traffic pumping" schemes, the number of minutes of calls routed to Counterclaim Defendants far exceeds the volumes of calls that would normally be routed to these sparsely populated communities. Likewise, the access bills that Counterclaim Defendants send to AT&T and other long distance carriers far exceed the bills for access in similarly-sized communities.

25. Simply put, under these traffic pumping schemes, the FCPs stimulate long distance calls by offering various calling services to the public free of charge. When a call is made to an FCP's service, Counterclaim Defendants route the call to or through equipment either

[2] AT&T understands that the FCPs offer numerous other "free" or virtually "free" services, including voicemail and calling card services. For simplicity, this Complaint focuses on the international calling, conferencing, and chat room services offered by the FCPs. But the allegations herein also apply to the voicemail, calling card, and any other services that may be exposed through the discovery process.

owned by the FCP or otherwise provided by Counterclaim Defendants, charge AT&T terminating switched access charges for that call, and then kickback a portion of the revenues from those charges to the FCP.

26. As noted, the long distance traffic generated by these schemes is very significant. For example, the very first access bill AT&T received from All American for the one month period from January 21 through February 20, 2006 sought access charges for *ten million* minutes of calls. Such traffic volumes are highly unusual for LECs that are just starting out, especially for LECs with only a handful of telephone numbers serving very remote and sparsely populated areas.

D. The Dispute Between AT&T And The Counterclaim Defendants.

27. AT&T received its first bills from the Counterclaim Defendants in April 2006. These bills included terminating switched access charges for switched access services the Counterclaim Defendants were supposedly providing to AT&T in sparsely populated local exchange areas located on the border of Utah and Nevada.

28. These bills raised several "red flags" within AT&T. First, it is highly unusual for three new CLECs to initiate service at around the same time in the same rural and sparsely populated areas. Second, the traffic reported by these LECs was all or virtually all terminating traffic, which means that few, if any, calls were originated by these LECs, notwithstanding that they purported to terminate millions of minutes of calls. Third, the amount of traffic in the bills from these LECs reflected far more traffic than typically exists in sparsely populated rural areas where local residents and businesses typically make and receive only a few long distance calls each month. Fourth, virtually none of the charges were for intrastate long distance calls. Fifth, at least one of these LECs was operating without an "Operating Company Number," which is a unique number assigned to all telecommunications carriers to facilitate billing.

29. In June 2006, after AT&T had paid certain of the Counterclaim Defendant's bills, AT&T chose to exercise its right under the relevant tariffs to dispute Counterclaim Defendants' bills, seek additional information from the Counterclaim Defendants to assess the validity of those bills, and to withhold further payment of those bills until the dispute is resolved.

30. Because Counterclaim Defendants operate behind Beehive's network, AT&T needed information from Counterclaim Defendants to assess whether the charges in their bills are consistent with their tariffs and federal law.

31. As a first step, AT&T requested that Counterclaim Defendants provide AT&T with "call detail" records, which include information regarding the telephone numbers associated with each call, the duration of the call, and certain other information. Counterclaim Defendants eventually provided some call detail records and AT&T analyzed them. The call detail records confirmed that the telephone numbers with the most traffic in the local exchanges were associated with the types of free calling services ordinarily associated with traffic pumping schemes and that, as a consequence, Counterclaim Defendants were engaged in traffic pumping.

32. In October, 2006, AT&T informed the Counterclaim Defendants that AT&T needed additional information to evaluate the extent to which the services billed by the Counterclaim Defendants were switched access services that could be billed to AT&T under the governing tariffs and federal and state laws, and to ensure that Counterclaim Defendants had not entered into arrangements resulting in an improper increase in access fees assessed against AT&T. By letters dated October 26, 2006, AT&T provided Counterclaim Defendants with specific lists of the required information. In particular, AT&T requested data designed to elicit basic information about: (i) the relationship between the Counterclaim Defendants and Beehive; (ii) the ownership structure of Counterclaim Defendants; (iii) information regarding the services

provided by the Counterclaim Defendants and the number of customers they served; and (iv) the types of facilities used by Counterclaim Defendants to provide the services billed to AT&T and what functionality was provided with those services.

33. This type of basic information was and is not readily available to AT&T from other sources for a variety of reasons, including because, as noted, the Counterclaim Defendants are privately owned companies that operate behind Beehive's network, and thus are not directly connected to AT&T's network. Counterclaim Defendants, however, refused to provide responses to AT&T's requests for information. Instead, Counterclaim Defendants demanded that AT&T immediately pay their bills, and then they initiated this lawsuit.

34. During the discovery phase of the lawsuit, AT&T again requested similar and additional information. For the most part, Counterclaim Defendants have resisted that discovery. At a pre-motion conference in March, 2008, however, counsel for Counterclaim Defendants did acknowledge that a portion of the traffic billed by the Counterclaim Defendants reflects traffic associated with international calling services.

E. The Counterclaim Defendants Are Not Providing Terminating Switched Access Under Their Tariffs With Respect To The Traffic Generated By The Traffic Pumping Schemes.

35. Based on AT&T's significant familiarity with traffic pumping schemes and the information available to AT&T about the particular schemes used by Counterclaim Defendants and the FCPs, it is AT&T's contention that Counterclaim Defendants have not provided terminating switched access services to AT&T for most, if not all, of the calls for which they have billed AT&T.

36. The Counterclaim Defendants' tariffs state that "Switched Access Service provides for the use of common switching, terminating, and trunking facilities between a Customer Designated Premises and an end user premises for originating and terminating traffic."

The "Customer Designated Premises" is AT&T's (or other long distance carrier's) point of presence. Therefore, to qualify as a terminating switched access service under the Counterclaim Defendants' tariffs, a long distance call carried by AT&T must "terminate" from AT&T's point of presence to an "end user premises" within the local exchange where the Counterclaim Defendants operate.

37. Based on its analysis of the Counterclaim Defendants' bills, as well as the call detail records that were provided to AT&T by the Counterclaim Defendants, it is clear that the vast majority of the calls billed to AT&T were routed to FCPs. Upon information and belief, the services provided by these FCPs included free conferencing services, free chat line services and free international services.

38. With respect to the FCPs' international calling services, the calls generated pursuant to those services clearly do not terminate in the local exchanges where the Counterclaim Defendants operate. The end users of such calls are clearly the recipients of the calls, and because these are international calls, the end users' premises are located in foreign countries, not in the local exchanges served by the Counterclaim Defendants. Thus, Counterclaim Defendants are not providing terminating switched access services to AT&T for calls to the FCPs' "free" international services.

39. For the chat room and conference call services, key issues relevant to whether the Counterclaim Defendants are actually providing terminating access services include, among others, the location of the bridges used to provide the "free" services, who occupies the building(s) where the bridges are located, and what facilities are used to deliver calls to those bridges. For example, if the bridges used to provide the chat room and conferencing services are located outside of the local exchanges served by the Counterclaim Defendants, the Counterclaim

Defendants by definition are not providing terminating access services for such calls. Likewise, if the bridges (or equipment used to route international calls) are located either in a Beehive central office or in an equipment building operated by the Counterclaim Defendants, they are not located at an "end user's premises" because Beehive and the Counterclaim Defendants are "carriers," and the definition of "end user" in the Counterclaim Defendants' tariffs excludes "carriers," which again means that Counterclaim Defendants are not providing terminating switched access services for calls to those bridges. Further, if the Counterclaim Defendants are not providing connections to the bridges (or equipment used to route international calls) using "common" facilities, the Counterclaim Defendants are not providing terminating switched access service as defined in their tariffs.

40. The Counterclaim Defendants have exclusive control over the information required to definitively resolve these issues, but despite repeated requests by AT&T, they have refused to provide it. Based on these refusals and AT&T's significant experience with traffic pumping schemes, AT&T believes that many or all of the bridges or other equipment used in the provision of these free calling services are located outside of the local exchanges served by the Counterclaim defendants, are located in buildings not occupied by the FCPs, or are served using facilities that are not common facilities. Counterclaim Defendants therefore are not providing terminating switched access services for the chat room, conferencing, international, and other free calling service calls to the FCPs.

41. Likewise, Counterclaim Defendants are not providing terminating switched access services for the free calling service calls generated by the FCPs' activities if the FCPs are not "end users" as that term is defined in the Counterclaimant Defendants' tariffs. The term "end user" is defined as "a user of local telecommunications services, not a carrier." Again, AT&T

has repeatedly requested that Counterclaim Defendants provide information that contradicts AT&T's understanding that FCPs do not qualify as "end users" under this definition, and the Counterclaim Defendants have refused to provide it. Among other facts relevant to these issues, "users" of tariffed local telecommunications services (i) typically order the services under procedures set forth in the tariff, (ii) normally obtain these services at their residence or business and not within the local carrier's property, (iii) are billed regularly for the local services, and (iv) pay the tariffed rates, the taxes and the regulatory fees associated with those services. Based on the Counterclaim Defendants' refusal to provide this type of information and AT&T's general understanding of traffic pumping schemes, AT&T believes that the FCPs do not qualify as "users of local telecommunications services" and hence are not "end users" under Counterclaim Defendants' tariffs.

42. Thus, on information and belief, Counterclaim Defendants are not providing AT&T with terminating switched access services, as that term is defined in their tariffs, for many or all of the calls to the "free" services offered by the FCPs, and the Counterclaim Defendants bills to AT&T that include such charges are inconsistent with their filed tariffs.

COUNT I
(Violation of Federal Tariffs and 47 U.S.C. § 203(c))

43. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 through 42 of its Counterclaims as if set forth fully herein.

44. Section 203(c) of the Communications Act, 47 U.S.C. § 203(c), states, in part, that "[n]o carrier . . . shall engage or participate in [interstate or foreign wire or radio] communication unless schedules have been filed and published in accordance with the provisions of this chapter, and with the regulations made thereunder" and that "no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation for such communication,

or for any service in connection therewith, . . . than the charges specified in the schedule then in effect. . . ."

45. Counterclaim Defendants have tariffs filed with the Federal Communications Commission ("FCC") that contain published rates, terms and conditions. Those tariffs state that Counterclaim Defendants "shall produce verifiable and auditable access bills." Those tariffs further state that "Switched Access Service provides for the use of common switching, terminating, and trunking facilities between a Customer Designated Premises and an end user premises for originating and terminating traffic."

46. Counterclaim Defendants have collected and continue to attempt to collect payments from AT&T under these tariffs for terminating switched access on calls to the "free" conferencing, chat room, and international calls offered by the FCPs. On information and belief, for the reasons stated above, Counterclaim Defendants have not and do not provide AT&T with terminating switched access services under the Counterclaim Defendants' filed tariffs for such calls. Further, for the reasons stated above, at least one Counterclaim Defendant initially provided bills that omitted information, such as the Operating Company Number, that was necessary for them to be verified.

47. Counterclaim Defendants have violated 47 U.S.C. § 203(c) by charging and continuing to charge for terminating switched access services under their filed tariffs in a manner that is contrary to the rates, terms, and conditions in their published tariffs.

48. AT&T has been damaged by Counterclaim Defendants' violations of Section 203(c), and prays for damages in an amount to be determined at trial, interest, attorney's fees, court costs, declaratory relief, injunctive relief and such other relief as the Court may deem just and reasonable.

COUNT II
(Unreasonable Practice in Violation of 47 U.S.C. § 201(b); Billing For Services Not Provided)

49. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 through 48 of its Counterclaims as if set forth fully herein.

50. Counterclaim Defendants have engaged in and continue to engage in unjust and unreasonable practices in connection with their provision of interstate communications services, in violation of 47 U.S.C. § 201(b), which provides that "all . . . practices" for and in connection with interstate services "shall be just and reasonable," and "any such . . . practice . . . that is unjust and unreasonable is hereby declared to be unlawful." 47 U.S.C. § 201(b).

51. Counterclaim Defendants have engaged in a scheme to knowingly charge AT&T and other long distance carriers for terminating switched access services pursuant to their tariffs for long distance calls to the numbers advertised by the FCPs with which Counterclaim Defendants have a business relationship.

52. On information and belief, Counterclaim Defendants did not provide terminating switched access services for many, or all, of those calls as that term is defined by their tariffs.

53. On information and belief, Counterclaim Defendants did not provide terminating switched access services for many, or all, of those calls, as provided for in the Act, including 47 U.S.C. § 153(16) (access services are "for the purpose of origination or termination of the telephone toll service"), and in governing rules and orders of the FCC.

54. By deliberately charging, demanding, and collecting compensation for service under their tariff that they do not provide, Counterclaim Defendants have engaged in unjust and unreasonable practices in violation of 47 U.S.C. § 201(b).

55. AT&T has been damaged by Counterclaim Defendant's violations of Section 201(b), and prays for damages in an amount to be determined at trial, interest, attorney's fees,

court costs, declaratory relief, injunctive relief and such other relief as the Court may deem just and reasonable.

COUNT III
(Unreasonable Practice in Violation of 47 U.S.C. § 201(b) – Sham Entity)

56. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 through 55 of its Counterclaims as if set forth fully herein.

57. On information and belief, Counterclaim Defendants were constituted as sham entities designed solely for the purpose of engaging in the traffic pumping schemes discussed above to extract inflated terminating switched access charges from AT&T and other long distance carriers.

58. Counterclaim Defendants, have in fact sought to extract inflated terminating switched access charges from AT&T and other long distance carriers by charging AT&T and other long distance carriers for terminating switched access services that Counterclaim Defendants did not provide.

59. The FCC has held creating a CLEC "as a sham entity designed solely to extract inflated access charges from IXCs . . . constitutes an unreasonable practice in connection with the provision of access services in violation of Section 201(b) of the Act." *Total Telecommunications Services, Inc.* v. *AT&T Corp.*, 16 FCC Rcd. 5726, ¶ 16 (2001).

60. AT&T has been damaged by Counterclaim Defendant's violations of Section 201(b), and prays for damages in an amount to be determined at trial, interest, attorney's fees, court costs, declaratory relief, injunctive relief and such other relief as the Court may deem just and reasonable.

COUNT IV
(Fraudulent and Negligent Misrepresentation)

61. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 through 60 of its Counterclaims as if set forth fully herein.

62. The Counterclaim Defendants issued bills to AT&T for interstate and intrastate access services purporting to inform AT&T of its access charge liability in each of those months.

63. The access bills contained false information because they included charges for terminating switched access services for calls associated with the services of the FCPs that were not terminated by Counterclaim Defendants.

64. The Counterclaim Defendants knew, or should have known, that they did not provide terminating access services for the calls associated with the services of the FCPs.

65. The Counterclaim Defendants knew, or should have known, that AT&T would rely upon the bills they submitted for access charges.

66. AT&T justifiably relied upon the false information presented in the above-identified access charge bills from the Counterclaim Defendants that AT&T paid.

67. AT&T incurred damages as a result of its justifiable reliance on statements by the Counterclaim Defendants that it knew or should have known were false.

68. AT&T prays for damages from the Counterclaim Defendants in an amount to be determined at trial, interest, attorney's fees, court costs, declaratory relief, injunctive relief and such other relief as the Court may deem appropriate.

COUNT V
(Unjust Enrichment)

69. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 through 68 of its Counterclaims as if set forth fully herein.

70. Counterclaim Defendants, through their unlawful, wrongful, improper, unjust, fraudulent and unfair conduct, have reaped substantial and unconscionable profits from AT&T under their tariffs. As such Counterclaim Defendants have received monies to which they are not entitled.

71. Counterclaim Defendant's unlawful conduct will continue unless the relief prayed for is granted.

COUNT VI
(Civil Conspiracy)

72. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 through 71 of its Counterclaims as if set forth fully herein.

73. Upon information and belief, each Counterclaim Defendant and one or more of the FCPs agreed to an illicit arrangement as follows: (i) the FCPs would place a "bridge" in or outside the Counterclaim Defendants' service territory; (ii) the Counterclaim Defendant would assign a telephone number to that bridge: (iii) the Counterclaim Defendant would bill AT&T for terminating access charges on long distance calls made by users of the calling service that was routed through the bridge; (iv) the Counterclaim Defendant would share with the FCPs a portion of the monies billed to or received from AT&T.

74. As explained above, most if not all of these calls do not terminate in Counterclaim Defendants' local calling areas. Counterclaim Defendants' conduct in billing AT&T for terminating access service for these calls violates the terms of Counterclaim Defendants' federal and state access tariffs, federal law and state law.

75. The agreements reached between each Counterclaim Defendant with one or more of the FCPs constitute agreements to take unlawful actions. The agreements between each Counterclaim Defendant and one or more of the FCPs constitutes a civil conspiracy or

conspiracies, and Counterclaim Defendants and the FCPs are liable for the harm caused by the unlawful acts taken in furtherance of the conspiracy.

76. The unlawful actions taken during and in the furtherance of the unlawful agreements between each Counterclaim Defendant and the FCPs have injured AT&T. AT&T prays for damages against Counterclaim Defendants in an amount to be determined at trial.

COUNT VII
(Declaratory Ruling)

77. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 through 76 of the Counterclaims as if fully set forth herein.

78. The bills rendered by Counterclaim Defendants to AT&T contain charges that purport to assess AT&T with terminating access charges for calls that Counterclaim Defendants did not terminate.

79. The inclusion of these access charges in bills submitted to AT&T violates the Counterclaim Defendants' federal and state access tariffs, the Communications Act, and the FCC's implementing rules and state law.

80. AT&T is entitled to judgment under 28 U.S.C. § 2201(a) declaring that (i) Counterclaim Defendants are not providing terminating switched access services to AT&T in connection with the calls routed to the FCPs, (ii) the interstate and intrastate access charges that appear in the bills rendered by the Counterclaim Defendants to AT&T violate their interstate and intrastate tariffs, the Communications Act and the FCC's implementing rules, and Utah and Nevada law, and (iii) AT&T is not obligated to pay the interstate or intrastate charges that appear in the bills rendered by the Counterclaim Defendants to AT&T that contain charges for calls made using the services of the FCPs.

WHEREFORE, for the reasons stated above, AT&T respectfully requests that judgment be entered for AT&T on each and all of its claims, together with appropriate damages, declaratory relief, injunctive relief, reasonable costs and fees, including attorney's fees and expert fees, and interest together with such other and further relief as the Court may deem just and equitable under the circumstances.

Dated: New York, New York
August 7, 2008

Sidley Austin LLP

By: _/s/ Steven M. Bierman_______

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ATTACHMENT 2

[Before the Federal Communications Commission, *In the Matter of AT&T Corp. v. All American Telephone Co., et al.*, Informal Complaint of AT&T Corp., EB-09-MDIC-0003, dated April 15, 2009]

EB-09-MDIC-0003

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

APR 15 2009

Federal Communications Commission
Office of the Secretary

In the Matter of	)
AT&T CORP. **One AT&T Way** **Bedminster, NJ 07921** **Tel: 908-234-6263**	)
Complainant,	)
v.	)
ALL-AMERICAN TELEPHONE CO. **8635 W. Sahara Ave. Suite 498** **Las Vegas, NV 89117**	)
e-PINNACLE COMMUNICATIONS, INC. **400 N. 300 W., Suite 114** **Provo, UT 84604**	)
CHASECOM **1612 State Street** **Santa Barbara CA 93101**	)
Defendants.	)

INFORMAL COMPLAINT OF AT&T CORP.

Pursuant to Sections 201 and 208 of the Communications Act ("Act"), 47 U.S.C. §§ 201, 208, and Sections 1.716 to 1.718 of the Commission's Rules, 47 C.F.R. §§ 1.716-1.718, Complainant AT&T Corp. ("AT&T"), brings the following informal complaint against Defendants All-American Telephone Co. ("All-American"), e-Pinnacle Communications, Inc. ("e-Pinnacle"), and ChaseCom (collectively "the CLECs"), and states in support as follows:

1. By this informal complaint, which AT&T is filing pursuant to a primary jurisdiction referral, AT&T seeks a determination that the CLECs (i) have violated Section 201(b) of the Act, 47 U.S.C. § 201(b), and have committed an unreasonable practice by imposing inflated access charges on interexchange carriers ("IXCs") through improper sham arrangements and by operating as sham carriers, (ii) have no right to collect access charges from AT&T, including access charges previously billed to AT&T, and (iii) must refund access charges that AT&T has previously paid.

2. All American, e-Pinnacle and ChaseCom purport to compete against an incumbent local exchange carrier, the Beehive Telephone Company ("Beehive"), in the provision of local exchange services in Beehive's rural territory in Utah and Nevada. However, the CLECs are not actually competing to provide local exchange services – indeed, the CLECs are not even certified to provide local services in Beehive's Utah territory. Instead, the CLECs are engaging exclusively in traffic-stimulation schemes that the Commission has tentatively concluded should be deemed unlawful and that are intended to bilk IXCs out of millions of dollars by billing them for so-called "access services." In short, like the carriers at issue in the Commission's prior decision in *Total Telecomm. Servs. Inc.* v. *AT&T Corp.*, the CLECs are not legitimate carriers but are "sham entities" that are "designed solely to extract inflated access charges from IXCs."[1]

3. All of the facts known to AT&T about the CLECs' operations indicate that they are not legitimate providers of competitive local exchange or exchange access services. From the outset, the CLECs' bills raised suspicions: all three CLECs began billing AT&T in April, 2006, even though it is highly unusual for three genuine competitive carriers to begin operations

[1] *Total Telecomm. Servs. Inc.* v. *AT&T Corp.*, 16 FCC Rcd. 5726, ¶¶ 3, 16 (2001) ("*Total*"), *aff'd in part, rev'd in part sub nom.*, *AT&T Corp.* v. *FCC*, 317 F.3d 227 (D.C. Cir. 2003) ("*Total II*").

simultaneously in the same rural areas, in this case, Beehive's rural Utah and Nevada territories, which include some of the least populated areas in the country. AT&T's subsequent investigation confirmed that the telephone numbers to which the largest volumes of calls had been placed were associated with free pornographic and other "chat" and conferencing services, and not genuine customers.

4. Moreover, *all* of the traffic on the CLECs' bills since 2006 has been for *terminating* access services. This unusual traffic pattern indicates that – unless the CLECs somehow have attracted only customers that have never placed any outbound long distance calls over AT&T's network – the CLECs do not serve a single legitimate customer actually residing in Beehive's local exchanges. Instead, they are merely shells that exist solely to route calls to free chat line, conferencing and international providers and then to bill IXCs so-called access charges to pay the costs of those free services.

5. AT&T's investigation also revealed a number of unusual circumstances which reinforced the suspicion that the CLECs had no intent to provide competitive local services and were instead operating solely to engage in traffic-stimulation schemes. Among other things, the CLECs chose to operate in the territory of Beehive, which has a long history of engaging in schemes to inflate access charges, including traffic-stimulation schemes.[2] Notably, Beehive consented to, and indeed has actively encouraged, at least one of the CLECs' supposedly "competitive" operations within its territory. Beehive even permitted one of its directors to serve as All American's attorney representing All American in its application to be certified as a local carrier in Utah – including All American's request to compete against Beehive.

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[2] *See, e.g., AT&T Corp.* v. *Beehive Tel. Co.* 17 FCC Rcd. 11641, ¶ 6 (2002); *Beehive Tel. Co., Inc.*, 13 FCC Rcd. 12275, ¶¶ 11, 15-21 (1998); *Beehive Tel. Co., Inc.*, 14 FCC Rcd. 1224, ¶¶ 1, 20 (1998); *Beehive Tel. Co., Inc.*, 13 FCC Rcd. 2736, ¶¶ 11-14 (1998).

6. Moreover, at least prior to this year, the CLECs do not appear to own or operate any telecommunications facilities, and are, in fact, merely fronts for their own affiliated chat line services. In this regard, the CLECs appear to have unusually close connections with the providers of the free adult chat, conferencing, international, and other free services offered via traffic-stimulation schemes. For example, All-American's Director, President, and CEO, David Goodale, and one of its directors in Utah, Joy Boyd, serve, respectively, as an officer and as President of Joy Enterprises, Inc ("JEI"). JEI is an adult chat line provider, with the same place of business as All-American, that previously was involved with Beehive in traffic-stimulation schemes that the Commission deemed unlawful.[3]

7. Even the limited publicly available material thus establishes that these CLECs are mere shells that are designed solely to bill and collect so-called "access charges" from IXCs.[4] Absent the creation of these sham arrangements, the providers of the free adult chat, conferencing and international services would have no ability to impose access charges on IXCs and consequently no ability to subsidize the costs of those free services using sham arrangements that generate access revenues that the CLECs agree to split with these free calling providers. Likewise, absent these sham arrangements, Beehive would not be able to collect from AT&T spurious "tandem" access charges.

8. The record here is thus very similar to the facts that the FCC found dispositive in making a sham entity finding in *Total*, and raises a number of additional questions regarding the

[3] *See id.* Likewise, e-Pinnacle has the same name as a chat line provider that is involved in traffic-stimulation activities in Iowa that are currently subject to a complaint proceeding before the Iowa Utilities Board.

[4] As explained herein, AT&T vigorously disputes the CLECs' claims that they have provided access services within the meaning of their tariffs. However, those claims remain pending before the New York court that referred AT&T's sham entity claim to the Commission. As to that claim, AT&T is entitled to relief even if the CLECs are deemed to have provided access services in technical compliance with their tariffs.

CLECs' operations that AT&T seeks to resolve in this proceeding or, if necessary, in a formal complaint proceeding.

FACTS SUPPORTING AT&T's INFORMAL COMPLAINT

9. Pursuant to Rule 1.716(c), 47 C.F.R. § 1.716(c), and to place the issues of AT&T's informal complaint in context, it is helpful to review (1) facts regarding the three CLECs, including their relationships with Beehive and with Joy Enterprises; (2) AT&T's interactions with the CLECs and the nature of their traffic-stimulation operations within the Beehive local exchanges, and (3) the pending federal lawsuit between the CLECs and AT&T.

Facts Regarding the CLECs, Beehive, and Chatline Providers.

10. **All-American Telephone.** All American, like the other two CLECs, appears to have initiated its traffic-stimulation schemes in April, 2006, and since that time has routed calls to or through Beehive local exchanges in both Nevada and Utah.

11. *Nevada*: On January 17, 2001, All-American applied to the PUC of Nevada to become a certified provider of telecommunications service.[5] In its application, All American represented the nature of its proposed services as follows: "Initially, All American will resell the local exchange services of existing local exchange companies in Nevada, as well as interexchange services. As its customer base grows, All American may offer facilities-based local exchange services." *Id.* at 2. Mr. David Goodale was listed as the President of All-American, which listed 8635 W. Sahara, Suite 498, Las Vegas, NV, 89117, as its address. *Id.* at 1. As discussed below, Mr. Goodale is also associated with Joy Enterprises, Inc., an adult chat line provider that shares the same business address as All-American. Mr. Goodale is also

[5] Application, All-American Tel. Co., Docket No. 01-1023, at 2 (PUC of NV, filed Jan 17, 2001). Prior to that time, All-American stated that its business involved providing "voice mail and business conferencing services to its customers using telecommunications services purchased from local exchange companies and interexchange carriers." *Id.* at 3.

associated with a number of other conference and chat line calling companies, including Global Conference Partners and Audiocom.[6]

12. On February 22, 2001, the PUC of Nevada granted All American a certificate of public convenience and necessity to operate as a competitive provider of telecommunications services.[7] A few months later, the PUC of Nevada approved an interconnection agreement relating to reciprocal compensation between Beehive and All American.[8] The agreement provided for Beehive to charge a rate of 3.3 cents per minute for "non-local telecommunications traffic" when Beehive and All-American combined to provide access service connections to IXCs.[9]

13. *Utah.* On April 19, 2006, All American applied to the Utah Public Service Commission for a certificate of public convenience and necessity ("CPC") authorizing All American to "operate as a provider [of] local exchange telecommunications services in the State of Utah."[10] All American's application to the Utah PSC was submitted by "Judith O. Hooper,

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[6] Further, the application stated that, "[u]pon granting of this application, All American will engage Dr. William L. Dunlap to manage the start-up and day-to-day operations of its competitive telecommunications service offerings." *Id.* at 3. Dr. Dunlap's resume stated that he was "[p]resently the Chief Engineer of a small independent telephone company," which was not named. However, his business address was listed as a P.O. Box in "West Wendover," which is a rural town located in or near Beehive's territory.

[7] Order, *In re Application of All American Telephone Company*, Docket No. 01-1023 (PUC of NV Feb. 21, 2001).

[8] Order, *In re Joint Petition of Beehive Tel. Co., Inc. and All American Tel. Co. for Approval of Interconnection Agreement*, Docket No. 01-5039, at 2-3 (July 12, 2001).

[9] Exhibit A, to Joint Petition for Approval of An Interconnection Agreement, *In re Joint Petition of Beehive Tel. Co., Inc. and All American Tel. Co. for Approval of Interconnection Agreement*, Docket No. 01-5039, at 19, Attachment 1 (filed May 24, 2001).

[10] *Application of All American Tel. Co. Inc.*, Docket No. 06-2469-01, at 1 (Apr. 19, 2006) (Exh. 1) (attachments to the Application have been omitted).

Attorney for All American Telephone Company, Inc." *Id.* at 12. As described below, Ms. Hooper currently serves as a director for Beehive.

14. In its application, All American stated, among other things, (1) that it initially planned to operate as a switch-based reseller, but "intends to deploy its own switching platform;" (2) that it sought authority to provide "services to business and residential customers throughout the state of Utah;" (3) that its local services "will include . . . local exchange access services to single-line and multi-line customers;" (4) that its local exchange and exchange access services would allow origination and termination of calls to its customers; (5) that it "currently does plan to provide local exchange services in the service areas of small or rural local exchange carriers;" (6) that it "will provide . . . operator services, directory assistance, directory listings, and emergency services such as 911 and E911;" and (7) that it would be managed out of Nevada by its "current management team" and that its directors were "David Goodale [and] Joy Boyd."[11]

15. The Utah Rural Telecom Association raised objections to All American's application on the grounds that All American should not be permitted to operate in the local exchanges of small Utah LECs, *i.e.*, local exchanges with less than 5,000 access lines that are served by incumbent telephone corporations with fewer than 30,000 access lines in the state.[12] In response, on August 28, 2006, All American submitted an amended application, which provided that All American would not operate any local exchange with less than 5,000 lines served by an incumbent carrier with less than 30,000 Utah access lines – *except* for Beehive's local exchanges in Utah. *Id.*

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[11] *Id.* at 3-8.

[12] *See* Report and Order, *In the Matter of Application of All American Telephone Co., Inc., for a Certificate of Public Convenience and Necessity to Provide Local Exchange Services within the State of Utah*, Docket No. 06-2469-01, 2007 WL 5527292 (Utah P.S.C. March 7, 2007).

16. On January 16, 2007, the Utah Division of Public Utilities ("Utah DPU"), a division of the Utah Department of Commerce, raised issues regarding All American's request to operate in Beehive's local exchanges. *Id.* Consequently, All American submitted another amended application on February 20, 2007, this time eliminating the exception in its prior application that would have allowed All American to operate and compete in Beehive territory.[13] Based on this change, the Utah DPU recommended approval of the application as amended, and the Utah PSC granted the amended application. *Id.* Consequently, the CPC issued to All American by the Utah PSC expressly provides that All American is authorized to "provide public telecommunications services within the State of Utah, excluding those local exchanges of less than 5,000 access lines of incumbent telephone corporations with fewer than 30,000 access lines in the state." *Id.* Exh. A.

17. Despite the limitation in its Utah CPC, All American almost immediately began operating in Beehive's Utah territory. Indeed, as described below, even before it obtained authorization to operate as a CLEC in Utah, All American had already billed AT&T for two months of "access services" provided in Utah. Further, despite the clear limitation in its Utah CPC, All American negotiated a Utah interconnection agreement with Beehive.[14] And, as

[13] *See id.* (the second amended application provided, without limitation, that All American's request for authorization "exclud[ed] those exchanges with less than 5,000 access lines that are served by incumbent telephone corporations with fewer than 30,000 access lines in the state").

[14] On June 11, 2007, All American and Beehive filed the interconnection agreement with the Utah PSC. The Utah PSC apparently did not take action on the interconnection agreement. Because the Communications Act provides that negotiated interconnection agreements are deemed approved unless a state commission takes contrary action within 90 days, *see* 47 U.S.C. § 252(e)(4), the interconnection agreement apparently became effective. All American and Beehive, however, now take the position that the Utah PSC's *in*action with regard to the Beehive/All American interconnection agreement somehow implicitly amended the negotiated limitation in All American's CPC.

described below, All American significantly increased its access billing to AT&T in Beehive's Utah territory near the end of 2007.

18. After operating for months in Beehive's Utah territory, on April 23, 2008, All American filed a petition with the Utah PSC asking for a "*nunc pro tunc* amendment to its [CPC]."[15] The petition admitted that All American had been conducting business with Beehive "on the assumption that [All American] had authority to operate as a CLEC in the area certificated to Beehive" (*id.* at 2) – without specifying the precise nature of its business activities or disclosing that it is engaged in traffic-stimulation activities. All American's petition also conceded that, if the terms of its CPC "are viewed in isolation, independently of the interconnection agreement, [All American] technically may be deemed to lack authority to operate as a CLEC in the area certificated to Beehive." *Id.* The petition requested that All American's CPC be amended *nunc pro tunc* to allow it to operate within Beehive territory.

19. Several parties have intervened to oppose All American's petition, including AT&T. In addition, the Utah DPU, represented by the office of the Utah Attorney General, filed a request to dismiss the All American petition.[16] The Utah DPU stated that All American's operation in Beehive's territory "certainly is a potential violation of [All American's] Certificate." *Id.* at 3. The Utah DPU reiterated its prior concerns regarding All American's request to operate within Beehive's territory, and stated that All American's petition "makes no attempt to address [those] issues." *Id.* The DPU also explained that "[t]hrough formal data requests, the [DPU] has tried to ascertain what the nature of the services are that [All American]

[15] Petition, *In the Matter of Petition of All American Tel. Co. Inc. for a Nunc Pro Tunc Amendment of Its Certificate of Authority To Operate as a Competitive Local Exchange Carrier Within the State of Utah*, Docket No. 08-2469-01, at 1 (filed Apr. 23, 2008) (Exh. 2).

[16] *See* Division of Public Utilities' Request for Dismissal, *In the Matter of Petition of All American Tel. Co. Inc. for a Nunc Pro Tunc Amendment*, Docket No. 08-2469-01 (filed Oct. 23, 2008) (Exh. 3).

provides to Beehive. [All American] will not define the nature of its business with Beehive and, in fact, refuses to answer a second data request trying to clarify its services in the Beehive territory." *Id.* at 4. The Utah Committee of Consumer Services ("CCS"), which serves as the state's utility consumer advocate, supported the DPU motion to dismiss, stating that "All American knowingly exceeded" the terms of its CPC, and also contended that the Utah PSC should institute additional proceedings to determine whether All American's certificate should be cancelled.[17] This proceeding is currently pending before the Utah PSC.

20. **e-Pinnacle**. On July 4, 2004, e-Pinnacle filed an application with the Utah PSC to provide telecommunications services in Utah, "excluding those local exchanges having fewer than 5,000 lines of an incumbent telephone corporation with fewer than 30,000 access lines in the state."[18] The application was granted on November 20, 2004. *Id.* Despite the limitation in its Utah CPC, e-Pinnacle appears to have disregarded that limitation, and it began billing AT&T in 2006 for supposed access services provided within Beehive's Utah territory.

21. e-Pinnacle has the exact same name, and at least one similar officer, as "e-Pinnacle Communications, Inc.," a company that is involved in a complaint case before the Iowa Utilities Board ("IUB") instituted by Qwest that revolves around traffic-stimulation schemes.[19] Although a portion of the record in the IUB proceeding remains under seal, publicly available

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[17] *See* Utah Committee of Consumer Services' Response to Petition, *In the Matter of Petition of All American Tel. Co. Inc. for a Nunc Pro Tunc Amendment*, Docket No. 08-2469-01 (filed Jan. 7, 2009) (Exh. 4). Further, the CCS asserted that, by contending that it was appropriate to find that the All American CPC had been implicitly amended on the grounds that the Utah PSC had allowed the Beehive-All American interconnection to become effective, "All American and Beehive are exploiting the [Utah PSC's] procedures that are intended to ease a utility's administrative burden for complying with the certificate." *Id.* at 3-4.

[18] Report and Order, *In the Matter of Application of e-Pinnacle Communications, Inc., for a Certificate of Public Convenience and Necessity to Provide Local Exchange Services within the State of Utah*, Docket No. 04-2433-01, 2004 Utah PUC LEXIS 242 (Utah P.S.C. Oct. 20, 2004).

[19] *See Qwest Commc'ns Corp.* v. *Superior Tel. Coop., et al.*, Docket No. FCU-07-02 (I.U.B.).

documents indicate that e-Pinnacle operates as a chat line provider in connection with local exchange carriers in Iowa.[20]

22. On February 11, 2008, the Utah PSC issued an order canceling e-Pinnacle's Utah CPC.[21] The Utah PSC reported that e-Pinnacle had not paid required state regulatory fees for 2006, and that all letters and notices sent to e-Pinnacle's last known address had not been answered or returned. *Id.* Further, before revoking the e-Pinnacle CPC, the Utah PSC issued an order to show cause, and e-Pinnacle failed to respond to that order. *Id.*

23. **ChaseCom**. On April 13, 2005, ChaseCom filed an application with the Utah PSC to provide telecommunications services in Utah, "excluding those local exchanges having fewer than 5,000 lines of an incumbent telephone corporation with fewer than 30,000 access lines in the state."[22] The application was granted on July 13, 2005. *Id.* As with All American and e-Pinnacle, ChaseCom apparently has been operating in disregard of its Utah CPC, for it began billing AT&T in 2006, and continues to bill AT&T, for supposed access services provided within Beehive's Utah territory. The public record indicates that Herb Levitin is the President and a director of ChaseCom, and that, like Mr. Goodale, Mr. Levitin has been associated with a number of companies that provide conferencing services.

24. **Beehive**. Beehive is an incumbent local exchange carrier that provides services in rural areas in Utah and Nevada. Beehive has a long history of abuse of the access charge regime.

[20] *See, e.g.*, Order, *Qwest Commc'ns Corp.* v. *Superior Tel. Coop., et al.*, Docket No. FCU-07-02 (I.U.B. Dec. 10, 2008). e-Pinnacle was also a member of the so-called "Coalition for Carrier Neutrality," a group of Iowa LECs and conferencing companies that was formed in order to lobby Congress and the Commission.

[21] Report and Order Canceling Certificate, *In the Matter of Decertification of Epinnacle Communications, Inc.* Docket No. 07-2433-01, 2008 WL 4361108 (Utah PSC Feb. 11, 2008).

[22] Report and Order, *In the Matter of Application of Chase Com for a Certificate of Public Convenience and Necessity to Provide Local Exchange Services within the State of Utah*, Docket No. 05-2453-01, 2005 Utah PUC LEXIS 143 (Utah P.S.C. July 13, 2005).

See supra note 2. Most relevant to this proceeding, in 1998 and again in 2002, Beehive was held by the Commission to have overearned and to have charged unjust and unreasonable rates in connection with chat line traffic that Beehive exchanged with JEI. Among other things, Beehive agreed to share access revenues with JEI, and then tried to include its "commissions" to JEI in Beehive's rate base costs.

25. With its own traffic-stimulation schemes having been stymied, Beehive apparently decided that it could profit by allowing "competitive" carriers to operate traffic-stimulation schemes within Beehive's territory, and then inflating access charges to IXCs for its part in carrying this traffic. In a December 2003, memorandum to parties attending a meeting before the PUC of Nevada concerning Beehive's application to upgrade its network, Beehive disclosed that it planned to fund the upgrades through a traffic-stimulation arrangement with an unnamed CLEC: "Beehive has a large amount of transiting traffic that is terminated by a CLEC. We earn our tariffed access rates for switching and hauling this traffic to the CLEC."[23] The memo included the following question/answer: "What are the nature of the CLEC activities? The flip answer is we 'don't ask, and they don't tell.' But we truly are aware of some of their activities. The CLEC has multiple customers providing various types of automated calling services. . . One of the more successful operations is a business conference calling service. . . . There is no charge to the user other than the long distance charges." *Id.*[24]

26. Beehive is now billing AT&T at least $125,000 per month for tandem related access services that are directly associated with All American's traffic-stimulation arrangements.

[23] Memorandum, Chuck McCown, General Manager, Beehive Tel. Co., to All Parties Attending the Meeting at the PUC on Dec. 10, [2003], Dated Dec. 11, 2003 (Exh. 5).

[24] In addition to the moneys Beehive bills to IXCs for transport of traffic, the interconnection agreement between All American and Beehive indicates that Beehive might also be receiving compensation directly from All American to assure Beehive's cooperation in these access charge schemes.

In fact, however, the "access services" that Beehive is providing are improper, and require AT&T to pay multiple tandem switching charges for the calls routed to All American. Although AT&T is not challenging Beehive's charges with this informal complaint, it has disputed those charges and reserves its rights to do so in the future. With respect to this proceeding, however, Beehive's charges reinforce AT&T's claim that the CLECs' traffic-stimulation operations are merely a ploy to raise the level of access charges billed to IXCs.

27. To effectuate these access charge schemes, Beehive has taken a number of steps to welcome All American as a "competitor" within Beehive's Utah territory. According to information obtained from the offices of the Secretary of State in Nevada and in Utah, one of the current directors of Beehive is Judith Hooper.[25] Ms. Hooper also served as the attorney that submitted All American's initial application in 2006 to the Utah PSC – *i.e.*, the application that, had it been granted as proposed by Ms. Hooper and All American, would have allowed All American to compete lawfully against Beehive (*see* Exh. 1 at 2-3, 12).

28. Further, Beehive has actively supported All American's petition to the Utah PSC for a *nunc pro tunc* amendment to All American's CPC and has stated that it "consented to All American's certification in Beehive territory."[26] Given that a legitimate competitive local exchange carrier seeking to operate within Beehive territory would be actively seeking to win customers away from Beehive, Beehive's repeated support for All-American's entry strongly suggests that, in fact, All American has no plans actually to compete against Beehive in the provision of local exchange services to residents of Beehive's territories.

[25] *See, e.g.*, Exhs. 6-7 (printouts from Secretary of State websites in Utah and Nevada).

[26] Position Statement of Beehive Tel. Co. *In the Matter of Petition of All American Tel. Co. Inc. for a Nunc Pro Tunc Amendment of Its Certificate of Authority To Operate as a Competitive Local Exchange Carrier Within the State of Utah*, Docket No. 08-2469-01, at 7 (Jan. 7, 2009).

29. **Joy Enterprises Inc. (JEI).** JEI is an adult chat line provider that shares the same address as All American. As noted above, JEI was a party to Beehive's traffic-stimulation schemes in prior years. In addition, one of JEI's current officers, Joy Boyd, was listed as a director of All American on its 2006 CPC application to the Utah PSC,[27] and she is currently listed on this Commission's website as a "Chairman or Other Senior Officer" of All American.[28] Further, JEI's former president is David Goodale, who is President and CEO of All American.[29] Mr. Goodale is also associated with a number of other entities in Nevada that appear to be engaged in the conference call business, including Global Conference Partners, LLC and Audiocom, LLC. These entities appear to be participants in traffic-stimulation schemes with various other LECs. David Goodale is also listed as a Director of Capital Telephone, a South Dakota certificated CLEC. The listed officers of Capital (Joy Boyd, Galya Doucet and Wesley Doucet) are all current officers of JEI.

The CLECs' Traffic Stimulation Activities And Access Bills To AT&T.

30. Although AT&T does not know the precise details of the traffic-stimulation schemes devised by the three CLECs, AT&T has had significant experience with such arrangements across the country. The schemes typically work as follows: a LEC operating in a rural territory with relatively high switched access rates enters into revenue sharing agreements with "Free Calling Providers," or "FCPs," that promote over the Internet and other media a variety of "free" calling services, such as pornographic and other chat lines, conference calling, and international calling. The FCPs instruct callers to dial telephone numbers assigned to the

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[27] *See* Exh. 1 at 6. A search of the Utah Secretary of State website indicates that Ms. Boyd continues to serve as a Director of All American in Utah. *See* Exh. 9.

[28] http://fjallfoss.fcc.gov/cgb/form499/499detail.cfm?FilerNum=823486

[29] *See id.* and Exh. 8.

FCPs by the LEC, resulting in the calls being routed to local exchanges within the LEC's operating territory, or other places. Once routed, however, the calls are not connected to any actual residents of these communities. Instead, they are routed to equipment owned by the LEC or the FCPs. For the free "chat" and conferencing services, the caller is connected via a bridge to other calls; for free international services, the call is sent to a foreign telephone number chosen by the caller.

31. The LEC then bills AT&T and other IXCs for terminating access services for each minute of use of the "free" calling services – as though the calls were ordinary long distance calls placed to actual customers residing in the LEC's exchanges. Pursuant to revenue sharing arrangements, the LEC then kickbacks to the FCPs a portion of the access revenues which they collect from AT&T and other IXCs. As a result of these "traffic-stimulation" schemes, the number of minutes of calls routed to the LEC far exceeds the volumes of calls that would normally be routed to these sparsely populated communities. Likewise, the access bills that the LEC sends to AT&T and other IXCs far exceed the bills for access in similarly-sized communities.

32. AT&T received its first bills from each of the CLECs in April, 2006, for usage in January of that year, and these bills contained a number of indications that the CLECs were engaged in traffic-stimulation activity, and not the provision of genuine local exchange or exchange access services.[30] First, the mere fact that the three CLECs provided bills

[30] It is not clear from publicly available material whether the CLECs own or lease any facilities at all, or, if so, how they provide the so-called "access services" at issue. All American, for example, was until very recently listed in industry databases as a provider that uses unbundled network elements, not its own switching facilities. However, the All American-Beehive interconnection agreement in Nevada does not contain terms or conditions for Beehive's provision of unbundled network elements, and, pursuant to 47 U.S.C. § 251(f)(1), Beehive appears to be exempt from the unbundling and other obligations in 47 U.S.C. § 251(c).

simultaneously raised suspicions within AT&T, because it is highly unusual for three new CLECs to initiate service at the same time in the same rural and sparsely populated areas.[31] AT&T's review of the bills confirmed that all of the billed services were associated with local exchanges where Beehive was the incumbent local carrier – another red flag, given Beehive's past history of access abuses. Further, the amount of traffic in the bills from the CLECs, particularly All American, reflected far more traffic than typically exists in sparsely populated rural areas. The CLECs' billing volumes, however, were entirely consistent with traffic-stimulation activities.

33. Even more suspicious was the fact that the access services billed by each of the three CLECs consisted *entirely* of terminating access services, with *no* originating access services billed. Consequently, not one customer originated a single long distance call over AT&T's network. This factor strongly suggested that the CLECs were not providing services to any legitimate residents of Utah or Nevada. Even to this day, All American, e-Pinnacle, and ChaseCom bill AT&T entirely for terminating access, and have never billed AT&T any originating access services.

34. Given these red flags, AT&T began a further investigation of the CLECs' bills. AT&T's review confirmed that the telephone numbers to which the largest volumes of calls had been placed were associated with free "chat" and conferencing services. Based on its investigation, AT&T also rapidly came to the conclusion that none of the calls that the CLECs

[31] All American's bills in April and May, 2006, included usage for both Nevada *and* Utah – even though, as it turned out, All American had only recently applied for a CPC in Utah on April 19, 2006. All American billed AT&T for approximately $130,000 of services in early 2006 when All American was not certified to provide any services within any part of Utah. All American stopped billing AT&T for services in Utah after May, 2006, but continued to bill for traffic in Nevada. All American resumed billing in Utah in August, 2007, and currently All American bills AT&T for traffic in both states. e-Pinnacle and ChaseCom have billed AT&T only for services in Utah.

were routing to FCPs qualified as switched access services under the CLECs' switched access tariffs. Consequently, in June 2006, after AT&T had paid certain of the CLECs' bills, AT&T chose to exercise its right under the relevant tariffs to dispute the CLECs' bills, seek additional information from the CLECs to assess the validity of those bills, and to withhold further payment of those bills until the dispute is resolved.

35. In October, 2006, AT&T informed the CLECs that AT&T needed additional information to evaluate whether the CLECs were *bona fide* competitive carriers. In particular, AT&T requested data designed to elicit basic information about: (i) the relationship between the CLECs and Beehive; (ii) the ownership structure of the CLECs; (iii) information regarding the services provided by the CLECs and the number of customers they served; and (iv) the types of facilities used by the CLECs to provide the services billed to AT&T and what functionality was provided with those services. The CLECs refused to provide meaningful responses.

The CLECs' Lawsuit and AT&T's Defenses And Counterclaims.

36. The three CLECs, along with another Iowa-based CLEC, Great Lakes Communications Corp. ("Great Lakes"), filed suit against AT&T in the Southern District of New York on February 5, 2007.[32] As amended on March 6, 2007, the Complaint asserted three basic claims: (i) a collection action for access services allegedly provided pursuant to interstate and intrastate tariffs; (ii) claims that AT&T violated 47 U.S.C. § 201(b) and 47 U.S.C. § 203 by

[32] *All-American Tel. Co., et al.* v. *AT&T Corp.*, No. 07-cv-861 (S.D.N.Y.). Initially, the New York court stayed the case because AT&T had already filed suit on January 29, 2007, against Great Lakes and a number of other Iowa-based LECs in the Southern District of Iowa. *See AT&T Corp.* v. *Superior Tel. Coop., et al.*, No. 4:07-cv-00043-JEG-CFB (S.D. Iowa). The court in *All-American*, however, lifted the stay on February 1, 2008, after AT&T had dismissed its claims against Great Lakes, and the only remaining claims related to All American, e-Pinnacle, and Chase Com, none of which appeared to be involved in any federal court cases in Iowa.

allegedly invoking "self-help" and failing to pay for the tariffed services; (iii) a quantum meruit claim.[33]

37. On March 26, 2007, AT&T filed an answer and counterclaims, asserting federal law claims that that the CLECs violated Sections 201(b) and 203 of the Communications Act and state law fraud, civil conspiracy, and unjust enrichment claims.[34] AT&T's defenses and counterclaims raised two basic issues. First, AT&T denied that the three CLECs had provided access services consistent with the terms of their tariffs. As a consequence, AT&T took the position that the CLECs could not collect tariffed access services rates in connection with calls routed to FCPs in traffic-stimulation arrangements.[35] As described below, the court in *All-American* has retained jurisdiction over these aspects of the CLECs' claims and AT&T's defenses and counterclaims.

38. Second, AT&T claimed that, regardless of whether or not access services had been provided pursuant to tariffs, the CLECs had committed an unreasonable practice by creating "sham" arrangements designed solely for the purpose of seeking to collect inflated access charges. This "sham entity" claim arising under Section 201(b) is what the court eventually referred to the Commission and is the subject of this informal complaint.

39. On March 14, 2008, the CLECs moved for judgment on the pleadings. While that motion was pending, discovery in the case began, and AT&T served a number of discovery requests regarding its counterclaims and defenses, including its "sham entity" counterclaim.

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[33] *See* First Amended Complaint, *All-American Tel. Co., et al.* v. *AT&T Corp.*, No. 07-cv-861 (S.D.N.Y.) (filed March 6, 2007). Upon request of the Commission or its Staff, AT&T will provide copies of any materials from the *All-American* case.

[34] AT&T Corp., Answer to Amended Complaint And Counterclaims, *All-American Tel. Co., et al.* v. *AT&T Corp.*, No. 07-cv-861 (S.D.N.Y.) (filed March 26, 2007).

[35] *See generally* Mem. of Law In Support of AT&T's Motion for Reconsideration, *All-American Tel. Co., et al.* v. *AT&T Corp.*, No. 07-cv-861 (S.D.N.Y.) (filed August 7, 2008).

However, as they did in 2006 when AT&T asked for additional information about their operations, the CLECs refused to provide responses to much of the requested discovery.

40. On July 24, 2008, the court issued an order that granted Plaintiffs' motion for judgment on the pleadings, but that allowed AT&T to replead its counterclaims within 10 days of the order.[36] On August 7, 2008, AT&T repleaded to clarify the scope of the counterclaims and the issues that were in dispute.[37] AT&T also moved for reconsideration of the court's order granting the CLECs a judgment on the pleadings.[38]

41. On March 16, 2009, the court granted AT&T's motion for reconsideration and vacated its prior order. The court held that, with regard to the CLECs' collection actions counts, the CLECs have "the burden of proving that the [tariffed access] services were provided and meet the requirements of the applicable tariffs."[39] The court further noted that AT&T in its Answer and Counterclaims had denied the allegations in the Complaint that the CLECs had provided access services pursuant to tariff, and accordingly ruled that "those denials prevent this [c]ourt from finding on the pleadings that the 'chat lines' and [FCPs] are 'end users' and that the services provided were access services under the tariffs." *Id.*[40]

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[36] Order, *All-American Tel. Co., et al.* v. *AT&T Corp.*, No. 07-cv-861 (July 24, 2008, S.D.N.Y.).

[37] AT&T Corp., Answer and Amended Counterclaims to Plaintiffs' First Amended Complaint, *All-American Tel. Co., et al.* v. *AT&T Corp.*, No. 07-cv-861 (S.D.N.Y.) (filed Aug. 7, 2008, corrected version filed Aug. 14, 2008).

[38] *See* Mem. of Law In Support of AT&T's Motion for Reconsideration, *All-American Tel. Co., et al.* v. *AT&T Corp.*, No. 07-cv-861 (S.D.N.Y.) (filed August 7, 2008).

[39] Order, Slip Op. at 4, *All-American Tel. Co., et al.* v. *AT&T Corp.*, No. 07-cv-861 (March 16, 2009, S.D.N.Y.) (Exh. 10).

[40] On similar grounds, the court reinstated AT&T's counterclaims, finding that, in deciding a motion for judgment on the pleadings, the court must accept as true the allegations in the counterclaims that the CLECs had failed to provide access services within the meaning of the tariffs, and, as a consequence, AT&T's counterclaims stated valid claims for relief. *Id.* at 5.

42. The court also reinstated AT&T's "sham entity" counterclaim arising under Section 201(b) of the Communications Act, finding that it was appropriately raised in federal court pursuant to 47 U.S.C. § 207, but concluding that the counterclaim should be referred to the Commission under the primary jurisdiction doctrine. *Id.* at 5-7. The court directed AT&T to inform the court within 10 days of its order whether it would pursue the sham entity claim at the Commission, and to file a complaint with the Commission within 30 days of the court's order. By letter dated March 25, 2009, AT&T informed the court of its intention to pursue its "sham entity" counterclaim at the Commission.

THE CLECs HAVE VIOLATED 47 U.S.C. § 201(b) BY IMPOSING ACCESS CHARGES THROUGH SHAM ARRANGEMENTS

43. AT&T alleges that the CLECs have committed an unreasonable practice under Section 201(b), 47 U.S.C. § 201(b), because they are mere shell entities that have devised sham arrangements to inflate, by artificial and improper means, access charge billings to IXCs. The CLECs do not compete for local exchange customers within Beehive's local exchanges and are not even certified to provide such services in Utah. Rather, their sole business is engaging in traffic stimulation schemes involving adult and other free calling services – including chat and conferencing operations with which they are affiliated or otherwise closely connected.

44. The Commission's decision in *Total* is instructive.[41] *Total* involved entities operating a "chat line" service in a rural town called Big Cabin, Oklahoma. *Total*, ¶¶ 3, 5-6. Because, as discussed below, the Commission's rules limited the rates for access that one of the entities (Atlas) could bill directly to IXCs, Atlas created Total, which purported to be a carrier competing with Atlas in Big Cabin. *Id.* In fact, Total "provided no local exchange service" or

[41] *Total Telecomm. Servs. Inc.* v. *AT&T Corp.*, 16 FCC Rcd. 5726 (2001) ("*Total*"), *aff'd in part, rev'd in part sub nom.*, *AT&T Corp.* v. *FCC*, 317 F.3d 227 (D.C. Cir. 2003) ("*Total II*").

originating access service, and its sole activity was to route traffic to a chat line provider, Audiobridge, and then to bill AT&T and other IXCs for "access services" related to the chat calls. *Id.* ¶ 5. Audiobridge did not impose any charges on callers to the chat line but obtained revenues from Total, pursuant to an agreement "whereby Total would pay Audiobridge commission payments of 50 to 60 percent of Total's terminating access revenues from calls completed to Audiobridge." *Id.* ¶¶ 5-7.

45. The Commission found that the Atlas/Total relationship violated the Communications Act because "Atlas created Total as a sham entity designed solely to extract inflated access charges from IXCs, and that this artifice constitutes an unreasonable practice." *Id.* ¶ 16. The record before the Commission showed that Total was not a "legitimate independent entity." *Id.* ¶ 17. Among other things, Atlas and Total had common officers and directors (*id.* ¶¶ 3, 16), Total obtained all of its facilities from Atlas and located those facilities on Atlas's property (*id.*), and Total obtained start-up capital from Atlas (*id.*). Further, even though Total was nominally a "competitive" access provider, it was in fact a "mere shell" and neither provided any services apart from those related to the chat line nor served any actual residents of Big Cabin. *Id.* ¶¶ 5-7, 15. Total's only customer was Audiobridge, and Audiobridge's source of revenue was a share of the access revenues Total collected. *Id.* ¶¶ 5-7, 16.

46. In declaring this arrangement an unreasonable practice under Section 201(b), the Commission found that the Atlas/Total relationship "serves only to create a superficial distinction intended to enable Atlas to increase its fees for interexchange access for calls to the Audiobridge chat line." *Id.* ¶ 18. In particular, Atlas, as an incumbent LEC, was subject to dominant carrier regulation, and to meet those regulatory requirements, Atlas was a member of the National Exchange Carrier Association ("NECA"). Consequently, Atlas's tariffed rates for

access services were specified by NECA rules, Atlas could not raise its access rates, and any extra revenues Atlas would have obtained had it directly routed all of the chat line traffic to Audiobridge would have been pooled and shared with other NECA pool members. *Id.* ¶ 2 & n.4. Thus, Atlas created Total, which was not subject to dominant carrier regulation, and, under the regulatory regime then in place, was able to charge a higher access rate than Atlas. By creating Total, Atlas could thereby charge rates and obtain earnings that it was not otherwise entitled to bill or collect. In finding that Total's avoidance of dominant carrier regulation was unreasonable, the Commission held that it would not "permit Atlas to charge indirectly, through a sham arrangement, rates that it could not charge directly through its existing tariff." *Total* ¶ 18.

47. The D.C. Circuit upheld the Commission's determination that Atlas/Total had committed an unreasonable practice pursuant to Section 201(b). *Total II*, 317 F.3d at 230-33. The court agreed with the Commission's finding that the Atlas/Total arrangement was intended to "increase access charges" to AT&T: Atlas, as a dominant carrier, had to "get its tariffs pre-approved by the Commission. To that end, Atlas elected to charge the rates in the [NECA tariff] . . . . NECA participants pool their revenues, and each receives an amount equal to its costs and its *pro rata* share of all earnings." *Id.* at 231. Total was not subject to similar regulation, and could charge higher access rates and also could retain for itself all of the access revenues it billed and collected. *Id.* Because, "[c]learly, the entire arrangement was devised solely in order to circumvent regulation of Atlas" and had "no economic substance at all," the Court found that the Total/Atlas arrangement "deserves to be treated as a sham" and that the Commission's unreasonable practice finding was justified. *Id.* at 233.

48. The CLECs in this case likewise deserve to be treated as shams. *First*, the CLECs, despite their nominal status as competitors to Beehive, do not appear to provide

competitive local exchange services to any actual residents or businesses in rural Utah or Nevada. Instead the CLECs' sole business activity involves serving chat line and other FCPs pursuant to revenue sharing agreements. In actuality, these CLECs are not *bona fide* competitors but merely shell entities that, at least prior to 2009, do not appear to own or operate any local exchange facilities but instead appear to rely on Beehive for facilities that they use solely to perpetrate traffic-stimulation schemes. In fact, in Utah, the CLECs are barred from offering telephone services within Beehive's territory, although it appears that the CLECs have brazenly violated that prohibition in order to engage in their sole activity of routing calls to FCPs pursuant to revenue sharing agreements. That the CLECs are not providing competitive local exchange access to genuine residents of these rural territories is also confirmed by AT&T's investigation showing that the telephone numbers associated with highest levels of traffic are connected to FCPs and by the fact that the CLECs, like Total, provide no originating access services.

49. *Second*, these sham arrangements have enabled the real parties in interest – whether the CLECs' principals, Beehive, or the FCPs – to inflate charges to AT&T and other IXCs, and thereby to obtain revenues and earnings that they could not obtain directly, absent the existence of the sham. Prior to becoming authorized as competitive telecommunications carriers in Nevada and parts of Utah, the CLECs appear to have been providers of conferencing, chat, and voice mail services – and manifestly were not entitled to bill or collect access charges from IXCs when providing those services. They did not become CLECs in order to compete in providing local exchange services, but rather only for the purpose of obtaining authority to file tariffs for access services, and then to bill and collect access charges from IXCs in connection with traffic-stimulation activities, in order to subsidize the costs of providing free chat and conferencing services. Thus, it is only through sham arrangements that these companies have

been able to extract access charges from AT&T and other IXCs and to earn revenues that they simply could not obtain under their previous corporate structures.[42]

50. Likewise, these sham arrangements allow Beehive to assess charges on AT&T that it could not otherwise bill. Without these CLECs operating within Beehive territory, Beehive would not be engaged in the duplicative routing arrangements described above that have resulted in monthly access charges to AT&T alone of at least $125,000 per month, *i.e.*, *all* of the traffic related to these Beehive charges is attributable to All American's traffic-stimulation arrangements. It is surely the hope of collecting these charges – along with likely assurances from the CLECs that they had no intention of seeking to win over any of Beehive's existing customer base and thereby reduce Beehive's revenues – that convinced Beehive that it was in its best interests to support the "entry" of All American and other so-called "CLECs" into its territories.

51. *Third*, although much of the relevant information is in the sole possession the CLECs, Beehive, and/or the FCPs, the public record contains significant evidence of a "highly intertwined" relationship among these entities. Just as the "same person [wa]s both President of Atlas *and* Chairman of Total," *Total* ¶ 16, Mr. Goodale is President and CEO of All American and is a past President of JEI, and Joy Boyd is a director of both entities. Beehive and the CLECs also appear to share a very close relationship, with Beehive actively encouraging All American's supposedly competitive entry into Beehive territory and having allowed one of its directors to serve as All American's attorney in the regulatory proceedings where All American sought certification in Utah to compete against Beehive. These entities have sole possession of

[42] The same would be true of JEI or other FCPs that are involved in traffic-stimulation schemes with the CLECs. These entities cannot directly charge IXCs for access services for the free calling services they provide, but they can attempt to do so by forming a sham CLEC and then agreeing to split access revenues with the CLEC, thereby funding the free services.

this and other information that the Commission found relevant in *Total*, and AT&T strongly suspects that discovery will reveal additional evidence that the CLECs are controlled by, or in conjunction with, Beehive and/or the FCPs (such as JEI or other entities controlled by Mr. Goodale), and that these parties have otherwise entered into arrangements to share in the illicit gains from traffic stimulation activities.

52. For all of these reasons, the CLECs are not *bona fide* competitive carriers that compete to provide local exchange services in Beehive territory, but are sham carriers that operate according to sham arrangements which exist solely to enable the inflation of access charge billings and to obtain earnings that would otherwise be impermissible and unlawful absent the sham.

53. AT&T contends that the record AT&T has gathered from publicly available sources is already sufficient to justify a finding that the CLECs are sham entities. Nevertheless, because the CLECs are privately owned companies, and have refused to provide information about their activities, customers, ownership, financing, and other relevant facts, there are a number of questions that cannot be determined from publicly available materials. Consequently, the Commission should require the CLECs in this proceeding to provide such relevant information.

54. In particular, the Commission should investigate who formed and capitalized the CLECs, and whether they are controlled by, or in conjunction with, Beehive or with adult chat line, conferencing, or other types of free calling providers. *Cf. Total* ¶¶ 3, 16. Likewise, the Commission should confirm that the CLECs' sole or principal business is to engage in traffic-stimulation arrangements with free calling providers, and not to offer and provide local exchange services to customers that actually reside in Beehive's territories in Utah and Nevada. Similarly,

the Commission should gather facts regarding the CLECs' facilities used to provide the services at issue, how they obtained any such facilities, and where (and on what terms) they have been able to locate those facilities. *See id.*

55. AT&T has repeatedly asked the CLECs to provide answers to these and other similar questions and thereby to determine the legitimacy of their operations, but the CLECs have steadfastly refused to respond to AT&T. If – despite all outward appearances – the CLECs are not merely sham carriers that operate to inflate access charges to IXCs and to subsidize the costs of chat line and conferencing services, then it will be relatively easy for them to provide information that confirms those facts. Absent such a response, the Commission should issue the relief requested by AT&T.

56. For all of these reasons, and pursuant to Section 1.717(d), AT&T requests that the Commission should:

(1) find that the CLECs have violated Section 201(b), 47 U.S.C. § 201(b), and have committed an unreasonable practice by operating pursuant to sham arrangements rather than as legitimate competitive entities;

(2) declare that the CLECs are not entitled to collect access charges that they have billed AT&T and that AT&T has no obligation to pay bills for access services issued by the CLECs;

(3) order the CLECs to refund to AT&T all access charges that AT&T has paid to the CLECs.

Respectfully submitted,

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April 15, 2009

ATTACHMENT 3

[Iowa Utilities Board Transcript of August 14, 2009 IUB Decision Meeting]

IUB TRANSCRIPT

AUGUST 14, 2009 IUB DECISION MEETING

Can you tell ___ that Court is back in open session for a decision meeting that I, I if I am not mistaken, I think an outline was handed out earlier on to the public on the issues that we were dealing with in our closed session this morning. So at this point, the Board will address each one of these issues separately and I think Commissioner Tanner is going to start out with tariff issues.

BOARD MEMBER TANNER: The first issue is: Did the Respondents violate the terms of their access tariffs when they charged Qwest, Sprint, and AT&T terminating switched access fees for the traffic at issue in this case? The first sub-issue related to this is the question: Were the Free Conference Calling Service Companies Considered "End Users" as defined by the Respondents' Tariffs? The Access Tariff provisions require that calls be terminated to an End User who has subscribed to the tariff before access charges can be assessed from calls to that end user. Before I go into detail on the findings of fact I want to note for the record that we had discussed whether certain cases precluded us from even addressing this issue, the Jefferson Telephone case. It is my opinion that Jefferson Telephone does not preclude us from addressing this issue because it did not directly address these tariff issues; instead, it was a broader issue regarding revenue sharing. Again, the FCC proceeding, Farmers & Merchants, I do not consider final decision at this point and any findings of fact or law based on that record one are not yet final and two I think that this Board has a more complete record than what was before the FCC. So I just wanted to get that out of the way. Based on the record, the conference companies did not subscribe to the Respondents' services. In particular, the Respondents did not bill the conferencing companies for service. The net billing argument is not supported by the evidence. There are no accounting records to support it. Respondents did not bill for end user subscriber line charges or universal service charges. There were no monthly billings for ISDN service or any of the other evidence that one would expect to see if net billing had ___ been in place. ____________the Respondents offer amended agreements and back dated bills was unpersuasive. There is no evidence that those amendments reflected the original intent of the parties. Instead it was described by the conference calling companies as an attempt to change the deal. And in fact, you know, rather than being persuasive evidence, it raises a real concern that some of the parties may have been attempting to manufacture evidence after the fact in an attempt to create a false impression of the situation. Instead of treating the conference companies like end users, the Respondents shared profits with them and acted like they were in a joint business venture _____. Though profit sharing is not determinative of this matter, it simply shows no evidence they were netting the conference companies monthly bills against the shared profit. Finally, the Respondents also argue that filed tariff doctrine should allow them to go back and apply the tariff terms to the conferencing companies. But I believe that argument misses the point. These conference companies were never end users under the tariff, the tariff does not apply in these circumstances, so the filed tariff doctrine does not apply. For all of these reasons, I find that the conference companies were not subscribing end users within the meaning of the term as it is used in the Respondents' access tariffs. That is my finding.

?: I agree.

BOARD MEMBER TANNER: The next sub-issue is did the toll traffic at issue in this case terminate at an end user's premises? The access tariff provisions require that the calls be terminated at the end user premises before access charges can be assessed from the relevant calls (28:02). It is my proposed finding that here the conference companies did not own or lease or otherwise control the premises where the conferencing equipment was installed, supporting the finding that calls are not being terminated at the end user premises. The Respondents make two main arguments in response. First they make the same net billing argument that was just rejected above. That is the lease payments for the space were netted out and the payments from the Respondents to the conferencing companies. Again there is no evidence to support that argument. _______payments reflecting that, no accounting records to support it, no monthly billings, and the conferencing companies did not control the space that was supposed to have been leased to them. The Respondents also point out that conference companies typically own the actual conference call bridges and some other equipment. This argument misses the point. The issue is whether the Respondents own or control the premises and there is no evidence that they did. For those reasons I conclude the traffic was not terminated at the end users premises in a manner that satisfies the requirements of the Respondents' access services tariffs. 26:48

?: I agree with the facts you cited in your reasoning and also _____ and I concur.

BOARD MEMBER TANNER: Another issue related to the tariff issue is did the toll traffic at issue in this case terminate within the Respondents' Certificated Local Exchange area? Under the relevant tariff provisions terminating access charges can only be assessed for calls that terminate in the LEC's local exchange area. This is an issue that does not equally affect all Respondents and the facts vary from one company to another. The first variation here involved international calling parties *~coughing~* and involved 5 of the 8 Respondents. A proper end to end analysis as set forth by the FCC of these calls supports a finding that none of these calls were actually terminated in the Respondent exchanges, thus terminating access charges should not have been assessed to these calls. The secondary issue involved the situation in which a Respondent billed terminating access charge as if the calls were terminated in a different exchange. This variation affects 3 of the 8 Respondents. Two of them attempted to justify the practice by claiming that it was foreign exchange service. That claim is totally unsupported by the facts. The conferencing companies did not order or pay for FX service and the calls are never actually transmitted to the alleged foreign exchange. There really was no valid argument for what these carriers did; it appears they were simply trying to maximize the access charges that they were applying to the *~coughing~* by actually moving the equipment to the other exchange. The third variation involves 2 Respondents, Great Lakes & Superior, which claim to terminate calls in exchanges where they do not have a certificate to provide local exchange service. Great Lakes is certificated to provide service in Lake Park and Milford and these telephone numbers assigned to those exchanges to provide conference calling bridging in Spencer where it is not certificated (24:35). Superior's Articles of Incorporation limit it to providing local exchange service in Superior, but it also provided conference bridging in Spencer. The valid arguments were offered to try to justify the application of access charges to this traffic. In each of these situations I conclude that the ____ (24:07) traffic was not terminated in the respective Respondents certificated local exchange area and access charges could not be applied on those calls (23:58).

?: Yeah, I agree with your factual analysis _____ and concur also.

BOARD MEMBER TANNER: And I will editorialize on that last piece that was a tariff discussion but you know, I find, I know we're going to talk about public policy issues but I find the application that the arrangements where terminating access was applied to international calls (23:22) or access charges terminating in a applied to an exchange, foreign exchange, that the calls did not even terminated to be particularly egregious and I know we'll discuss public policy issues, whether these sorts of issues or arrangements should go forward in the future but I was particularly disappointed to see these arrangements were _______ (22:51). So, in conclusion, back to the tariff issue, for all the reasons we have discussed, the Board will direct *~coughing~* (22:41) to draft an order for the Board's consideration that finds that the conferencing companies were not end users for purposes of the Respondents' exchange access tariffs; therefore, access charges did not apply to these calls and should not have been charged to the Interexchange Carriers. The Order should order the Respondents to refund the illegally collected access charges to the Petitioner and Interveners. Because the precise amount of the appropriate funds (22:16) is not entirely clear on the record, the Board, in its order, should ask Qwest, AT&T, and Sprint to file their calculations of the amount of the illegal access charges they were billed by and paid to the Respondents. If they need additional discovery from the Respondents to make this calculation they should be authorized to conduct that discovery.

?: Thank you, Board Member Tanner. Anything else you want to discuss _____ (21:49) policy issues?

BOARD MEMBER HANSEN: Well, first I ___ agree with the, everything that ___(21:38) the order that's the logical _______ (21:33). The public policy issues really relate to what we should consider in terms of future policy. And there are some ____ (21:20) that are grounded in the events that have already happened. These really are _____ (21:07) issues. The first one is the question of whether the sharing of access revenues between the Respondents and a free calling service company whether that's an unreasonable and discriminatory practice. The Petitioners ask that we find the revenue sharing arrangement was unreasonable and discriminatory. Well, with the record in this case, I don't think we can find that revenue sharing on its face is inherently unreasonable. It may be a warning or red flag indicating that something unreasonable is occurring, but there certainly could be situations where revenue sharing might be a valid business arrangement. For example, the access rates are intended to be set at the level that are intended to recover the costs of access services and the carrier's willingness to share a substantial portion of its access revenue with a conferencing company may be evidence that the carrier's access rates are in fact too high. But, I think we need to emphasize that this is not an indictment of access charges in general. This is a separate issue. And our, my concern anyway is that in these particular instances we have three important considerations. First of all, a carrier's access rates are set based upon a relatively low historical volume of access services (19:43). A second, the current and future volume of those services becomes much, much greater (19:39). And third, the carrier has substantial market power perhaps even monopoly power, over those services. In those particular situations, which I believe we find in this case, I believe that a sharing of those revenues is unreasonable. Now, I think we should also emphasize that if we find, we all agree that this was an unreasonable result, that finding would not be a reason to order refunds or retrospective relief because that decision has to be based on the tariff issues we have already discussed. It would just be a basis for addressing the situation in a forward going future-looking basis. So, I did find that in this particular case the arrangements were unreasonable. We were asked to find also if they are unreasonable and discriminatory. On the question of whether these were discriminatory arrangements, I personally did not find them to be discriminatory, but maybe not for the reasons that the Respondents would have preferred. Because I did not consider the conferencing companies to be end users, I don't think the sharing of access revenues was discriminatory, although it might have been unreasonable. However, ironically, if Respondents had prevailed on their claims that the free conferencing companies were end users, I would have very likely found that sharing the access revenues would have been discriminatory unless all or similar potential customers could have entered into the same agreements _________ (17:59). But, based on the finding that ____ this is an unreasonable arrangement in this particular case, I would like the order to direct that that we start a rule making proceeding, and start it very quickly. To consider amendments to our rules that are _____ (17:32) unreasonable _______ similar situations.

?: I agree with your analysis that you recommended just wanting to go back and ____ (17:20) emphasize the points you made and that's that this is not in any way an indictment of the access charges in general and that it is specific to this situation _______ (17:09).

BOARD MEMBER TANNER: I agree with that. The rule making that we envision has had volume access services and that that rule making will proceed independently and any other open issues we have regarding the CCL ? (16:50) order or any other _____(16:48) access charges. It's important that *~coughing~* that _____ (16:38) have a fair hearing and analysis of that issue separate from this and so this will make ______ (16:28) high volume services require the lower _____ than high volume. I would also note that it is our expectation that that we're making the

_____ (16:11) if not simultaneously, then within a week or so of this order, of the final order in this case. This is not going to be a situation where some time goes by before we initiate this rule making I think and I agree with the issues as laid out by Board Member Hansen. And I agree that it's not the sharing of revenues that troubles me it's that we have, when you get to the part ___ (15:38) what troubles me about this is that it's the high volume access, getting the access rates, that were supposed to be for low volume minutes, and so that I think is a _____ (15:21) issue, and that's what has to be ____ (15:18).

BOARD MEMBER HANSEN: The next public policy issue to consider is whether the Board should restrict conferencing services that promote pornographic or adult content on lines that can't be blocked by the end user. Qwest (15:03) us to restrict conferencing services that promote obscene content which can't be blocked. I can't emphasize enough that the Board should not, will not, and does not want to, regulate the content of telephone calls. However, the agency does have the authority to regulate access by minors to obscene calling services. Particularly, to protect and to promote the ability of parents to control that access by their own children. So, with that in mind, I think the Board should direct General Counsel to prepare an order for the Board's consideration that initiates rule making proceeding that will amend the Board's rules modeled on 47 U.S.C. §223 to restrict access to obscene calling, to allow access to be restricted in the case of obscene calling services.

?: I agree respectfully.

BOARD MEMBER TANNER: I agree as well.

BOARD MEMBER HANSEN: The next public policy issue is whether the Board should address Aventure's Federal Universal Service Fund support. Qwest and AT&T have asked the Board to take action against what they describe as Aventure's misuse of Federal Universal Service Funds support. The record in this case does indicate Aventure is alone among the Respondents in reporting conference cal ling lines for USF purposes. And in particular ____(13:35) includes test lines in its report and also appears to have overstated a number of exchanges ____ (13:29). However, the administration of the Federal USF is not our responsibility, not our jurisdiction. So I think we should report this information to the FCC for any further action as the FCC finds to be appropriate.

?: I agree respectfully.

BOARD MEMBER TANNER: I agree as well.

BOARD MEMBER HANSEN: Next one is if the Board should address the use of telephone numbering resources for Free Calling Service Companies. The evidence on the record indicates that some of the Respondents have received telephone numbers for exchanges in which they are not certificated to provide service and others may have blocks of telephone numbers that are not being used to provide service. I think there is sufficient evidence in the record to require ______ (12:44) to commence reclamation of some of the numbers assigned to Great Lakes, which has no end users. The other 7 Respondents should be required in our final order to file reports with the Board within 10 days of that order establishing whether they have any numbering blocks _____ no end users assigned.

?: _____ (12:20) recommendations.

BOARD MEMBER HANSEN: Then we have the issue of rural exemptions. The question is should the Board make a declaratory finding regarding the rural exemptions claimed by Aventure Communication Technology, LLC, and Great Lakes Communication Corp. Qwest has asked the Board to make a finding pertaining to the federal rural exemptions claimed by those companies. The rural exemption provisions that Qwest refers to relate to interstate access charges. Our jurisdiction in that matter is limited to intrastate access charges. So, no finding on this matter is appropriate; however, I think we should refer the issue to the FCC because the evidence in our record would support a finding that Great Lakes failed to satisfy the requirements for the rural exemption in its claim. The evidence with respect to Aventure is not so clear and does not appear to support such a claim.

?: I agree respectfully.

BOARD MEMBER TANNER: I agree as well.

BOARD MEMBER HANSEN: And the last issue to discuss under forward looking public policy is ___ (11:01) the evidence in this record establishes that Great Lakes and Aventure have few, if any, customers and that they have provided services and exchanges that are not covered by their certificates. So, I think the Board should direct the General Counsel to prepare orders for our consideration that will require those carriers to appear before the Board and show cause whether certificates of public convenience and necessity that are issued pursuant to Iowa code Chapter 476.29 should not be revoked.

?: Yeah, I agree with the recommendation.

BOARD MEMBER TANNER: I agree as well.

?: The last major area we have dealt with today concerns counterclaims. And in this docket the first one concerns whether Qwest and Sprint engage in unlawful self-help by refusing to pay tariffed charges for switched access. There are two forms of self-help at issue here. The first is Qwest action withholding payment of disputed access charges. I recommend here that the Board should find that unilaterally withholding payment is not a preferred form of self-help in these types of economic schemes ? unless a tariff ____(9:41) agreement provides withholding disputed amounts as part of ______ (9:37); however, based upon the rulings that have already been made, no money is owed by Qwest to the Respondents and there is no need for any sanction ____ (9:27). The second form of alleged illegal self-help involves claims that Qwest participated in call blocking and routed calls to other (9:18) and that Sprint deliberately chocked the traffic by moving conference traffic to _____(9:13) trunks. There is no credible evidence to support allegations that Qwest blocked calls. It is possible the calls were undelivered after Qwest ceased delivering calls and _____ (9:01) in which case Qwest is not responsible for any undelivered calls and this counterclaim should be denied. However, it does appear that Sprint did engage in call blocking be deliberately routing traffic to under capacity trunks without providing ___ (8:44). We have been asked to consider civil penalties for this action. Iowa code 476.51 requires the Board to provide the utility with written notice of a specific violation and gives us authority to levy civil penalties for subsequent violations. We should find that Sprint blocked calls associated with conference traffic and provide written notice to Sprint of the violation including notice that it would be subject to civil penalties for future violations.

BOARD MEMBER HANSEN: I concur.

BOARD MEMBER TANNER: I concur.

?: The next counterclaim is whether Qwest engaged in unlawful discrimination by making payments to some but not all of its customers. This counterclaim is based on the fact that Qwest sometimes pays volume based commissions to sales agents. The Board has previously held that revenue sharing is not inherently unreasonable so this counterclaim is unavailing. Moreover, Qwest is paying these commissions to sales agents, which is not at all similar to sharing revenues with a customer. Qwest _____ (7:35). Qwest's practices in this area simply are not relevant to the case.

BOARD MEMBER TANNER: I agree.

BOARD MEMBER HANSEN: I agree.

?: And finally, did Qwest discriminate against its wholesale carrier-customers by offering them unequal discounts. Reasnor argues that Qwest is engaged in unlawful discrimination by offering service discounts to wholesale customers. Again, that situation is not comparable to Respondents' activities in this case. Qwest is offering discounts in a competitive market that is deregulated and de-tariffed. Reasnor also argues that Qwest wholesale rates are in violation of the prohibition of geographic deaveraging but the prohibition applies to regional rates, not wholesale. Finally, Reasnor's claims that Qwest is somehow providing ____ (6:52) discount to ____ (6:49) was raised too late for this proceeding and will not be considered.

BOARD MEMBER HANSEN: I agree with all of this.

ATTACHMENT 4

[Excerpts From Pending Federal Court Cases and State Regulatory Proceedings]

AT&T Corp. v. Superior Telephone Cooperative, et. al.

Docket No. 4:07-cv-00043

United States District Court for the Southern District of Iowa (Central Division)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

AT&T Corp., Plaintiff,	)	
v.	)	
Superior Telephone Cooperative; The Farmers Telephone Company of Riceville, Iowa; Interstate 35 Telephone Company d/b/a Interstate Communications Company; Great Lakes Communication Corp.; Aventure Communication Technology, LLC; Futurephone.com LLC; Future Fone Services, Inc.; Free Call Planet LLC; Does 1-10 and Roes 1-10, Defendants.	)	No. ____________

COMPLAINT

AT&T Corp. ("AT&T"), by and through its attorneys, for its complaint against defendants Superior Telephone Cooperative ("Superior"), The Farmers Telephone Company of Riceville, Iowa ("Farmers-Riceville"), Interstate 35 Telephone Company, d/b/a Interstate Communications Company) ("Interstate"), Great Lakes Communication Corp. ("Great Lakes"), Aventure Communication Technology, LLC ("Aventure"), Futurephone.com LLC ("Futurephone"), Future Fone Services, Inc. ("Future Fone"), Free Call Planet LLC ("Free Call Planet"), Does 1-10 and Roes 1-10 (collectively, "Defendants"), alleges as follows:

INTRODUCTION

1. By this action, AT&T seeks to stop deceitful and unlawful schemes through which AT&T unlawfully is billed exorbitant fees for call termination services that are not provided. Defendants' schemes violate federal communications laws and regulations, the

76. Because each of these calls is a single international call, with no endpoints in Iowa, that does not terminate at the gateway in a LEC Defendant's service territory, the LEC Defendants do not provide AT&T with terminating access service in connection with these international voice calls.

77. Even though the LEC Defendants are not providing AT&T with terminating access services in connection with these calls, the LEC Defendants are billing AT&T for terminating access service in connection with these voice calls.

78. Billing for services that a carrier has not provided, and, specifically, billing for terminating access charges for international voice calls for which the LEC Defendants provide only intermediate routing, constitutes an unjust and unreasonable practice that is unlawful under Section 201(b) of the Act.

79. Upon information and belief, one or more LEC Defendants have also engaged in unjust and unreasonable practices in violation of § 201(b) by shifting their interconnection points through sham arrangements that serve no legitimate business purpose and serve only to inflate the transport component of the access charges that these LEC Defendants bill to AT&T.

80. Upon information and belief, the LEC Defendants are involved in other unlawful schemes and sham arrangements that are also designed to inflate their monthly access charges to AT&T.

81. AT&T has been damaged by the LEC Defendants' unlawful practices, and prays for damages in an amount to be determined at trial, interest, attorneys' fees, court

Qwest Communications Corporation v. Superior Telephone Cooperative, et. al.

Docket No. 4:07-cv-00078

United States District Court for the Southern District of Iowa (Central Division)

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Qwest Communications Corporation, **Plaintiff,** **v.** **Superior Telephone Cooperative, The Farmers Telephone Company of Riceville, Iowa, Dixon Telephone Company, Interstate 35 Telephone Company d/b/a Interstate Communications Company, Reasnor Telephone Company, LLC, Great Lakes Communication Corp., Aventure Communication Technology, LLC, Future Fone Services Inc., Free Call Planet LLC, Audiocom, LLC, Fonpods, Inc., FreeConferenceCall Holdings Corporation and Slone Group, Inc.** **Defendants.**	**No.** ________________

COMPLAINT AND JURY DEMAND

Qwest Communications Corporation ("QCC"), by and through its attorneys, for its complaint against Defendants Superior Telephone Cooperative ("Superior"), The Farmers Telephone Company of Riceville, Iowa ("Farmers-Riceville"), Dixon Telephone Company ("Dixon"), Interstate 35 Telephone Company d/b/a Interstate Communications Company ("Interstate 35"), Reasnor Telephone Company, LLC ("Reasnor"), Great Lakes Communication Corp. ("Great Lakes"), Aventure Communication Technology, LLC ("Aventure"), Future Fone Services Inc. ("FuturePhone"), Free Call Planet LLC ("FreeCallPlanet"), Audiocom LLC ("FreeChatLines"), Fonpods, Inc. ("Fonpods"), FreeConferenceCall Holdings Corporation

41. This discrimination is unreasonable and unjust because the revenue sharing with the Free Calling Services Company Defendants is tied to an effort to exploit the LEC Defendants exclusive ability to provide switched access services and collect exorbitant switched access charges from long distance carriers such as QCC.

COUNT I
(47 U.S.C. §§ 206, 207 Claim for Violation of 47 U.S.C. § 201(b))
(Against all LEC Defendants)

42. QCC repeats and realleges each and every allegation of paragraphs 1 through 41 above, and incorporates them by reference as though fully set forth herein.

43. The LEC Defendants have engaged in an unjust and unreasonable practice in connection with their provision of interstate communication services, in violation of their 47 U.S.C. § 201(b) duties. In addition, the LEC Defendants have knowingly set access rates based on factual assumptions concerning the level of traffic they expected to process, resulting in access rates wildly out of line with the amount of traffic that the LEC Defendants are billing for.

44. The LEC Defendants have engaged in a scheme to knowingly charge long distance carriers, including QCC, under their access tariffs for purportedly "terminating" long distance calls destined for "free" chat-line and other such purported services offered by the Free Calling Service Companies and with whom the LEC Defendants share the resulting switched access revenues.

45. This scheme has allowed the LEC Defendants to substantially inflate the number of long distance calls routed through the LEC Defendants, including but not limited to QCC's customers, and thereby substantially inflate the LEC Defendants' terminating access revenue.

46. Prior to establishing the revenue-sharing arrangements with the Free Calling Service Companies, each of the LEC Defendants that are incumbent providers dropped out of the

NECA tariff pool, which provided them with the ability to receive all of the terminating switched access services terminating in their local area. In furtherance of its scheme, after dropping out of the NECA pool, Superior filed a tariff that set higher rates for terminating switched access. The LEC Defendants that are competitive local exchange carriers also have tariffs that permitted them to collect switched access charges on an individual basis and, on information and belief, these telephone companies were created in large part to serve as a conduit to generate excessive long distance traffic and, therefore, terminating switched access revenue from long distance carriers like QCC.

47. By deliberately establishing individual tariffs that generate revenues far exceeding what is necessary to compensate the LEC Defendants for the use of their local network, and knowing that their schemes with the Free Calling Services Company Defendants would stimulate massive increases in long distance telephone calls, the LEC Defendants have abused their regulatory status as common carriers to intentionally extract massively-increased fees from QCC.

48. The LEC Defendants intended this scheme to require QCC (and other long distance carriers) to bear all of the costs of the Free Calling Services Companies without their consent and without benefit to QCC (or the other long distance carriers), and thus allow the LEC Defendants to reap enormous profits at QCC's (and other long distance carrier's) expense.

49. The LEC Defendants' violations of Section 201(b) have caused QCC to suffer actual economic damages in an amount that QCC will prove at trial. QCC therefore has the right to sue for its actual damages resulting from the LEC Defendants' violations of Section 201(b), pursuant to Sections 206 and 207 of Title 47. Pursuant to Section 206, QCC also seeks its reasonable attorney fees incurred in this litigation.

Sprint Communications Company, L.P. v. Superior Telephone Cooperative, et. al.

Docket No. 4:07-cv-00194

United States District Court for the Southern District of Iowa (Central Division)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Sprint Communications Company L.P., Plaintiff, vs. Superior Telephone Cooperative; The Farmers Telephone Company of Riceville, Iowa; Reasnor Telephone Company, LLC; Farmers and Merchants Mutual Telephone Company; Aventure Communication Technology, LLC; Dixon Telephone Company; Great Lakes Communication Corporation; Interstate 35 Telephone Company d/b/a Interstate Communications Company; Mediapolis Telephone Company; Spencer Municipal Utilities; Global Conference Partners, LLC d/b/a FreeConference.com; Keenan Communications Inc. d/b/a QualityConferenceCall.com; Future Fone Services Inc. d/b/a FuturePhone.com; FuturePhone.com LLC d/b/a FutureFone.com; Does 1-10; and Roes 1-10, Defendants.	Docket No. 04:07-cv-00194 **PLAINTIFF'S COMBINED RESPONSE TO DEFENDANTS' MOTIONS TO DISMISS OR STAY**

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II. Sprint's Claims are Properly Based on Challenges Consistent With the Filed Tariffs. 8

A. Sprint's claims under the Communications Act are not barred by the filed tariff doctrine. 8

21, 29.[15] In any event, to the extent the Defendants are arguing that some other provision of their tariff is applicable to the services in question or they are somehow otherwise able to charge for their service, it is their burden to assert the justification for the charge and how much they believe damages should be reduced thereby. In the absence of such an explanation, there is no basis to reduce damages at all, much less a basis to evaluate whether the hypothesized explanation would warrant a primary jurisdiction referral to the FCC.

In contrast to the arguments set forth by Defendants, it is clear that there are strong reasons for this Court to reject a primary jurisdiction referral. First, it is only this Court that can resolve both the interstate and intrastate parts of Sprint's claims. Some of the traffic at issue here is intrastate traffic, where the caller is both located in Iowa and dialing a number in Iowa. In those instances, the intrastate rather than the interstate tariffs apply, and it is the IUB, not the FCC, that has concurrent jurisdiction with this Court to resolve the intrastate claims. So a primary jurisdiction referral in this case would require referral to both the FCC and IUB with the attendant delays and expenses from both. Moreover, it is possible the FCC and IUB would reach different conclusions in interpreting the same tariff terms in the interstate and intrastate tariffs, creating the very inconsistency the LEC Defendants claim to want to avoid. Second, certain Call

[15] *See also Total Telecomms.*, 16 F.C.C.R. 5726, ¶ 40 (holding that "[b]ut for" its unlawful conduct, carrier "would not have charged AT&T anything at all" for alleged service, and therefore granting AT&T damages in amount AT&T paid for alleged service, plus interest). The Superior Defendants quote that portion of the *Total* decision that states generally and in dicta that "a purchaser of telecommunications service is not absolved from paying for the rendered services solely because the services furnished were not properly encompassed by the carrier's tariff." Superior Br. 11 (quoting *Total*, 16 F.C.C.R. 5726, ¶ 43). However, the D.C. Circuit subsequently reversed and remanded that portion of the FCC's decision and ordered "the Commission to consider AT&T's argument that Total did not provide access service." *AT&T*, 317 F.3d at 239. (The case settled without resolution of that issue.) The gist of the *AT&T* and *Total* cases is that a sham transaction cannot be used to artificially increase revenues at the expense of other carriers. That is precisely what is occurring in this case, where there is no reason other than arbitrage for the subject calls to pass through small towns in Iowa.

Farmers & Merchants Mutual Telephone Co. of Wayland, Iowa v. Qwest Communications Corporation

Docket No. 3:09-cv-00058

United States District Court for the Southern District of Iowa (Davenport Division)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

THE FARMERS & MERCHANTS MUTUAL TELEPHONE COMPANY OF WAYLAND, IOWA, Plaintiffs, v. QWEST COMMUNICATIONS CORPORATION, Defendant.	)	No. ____________ **COMPLAINT** **Jury Trial Demanded**

COMES NOW the Plaintiff, The Farmers & Merchants Mutual Telephone Company of Wayland, Iowa, Inc., and, for its Complaint against Defendant, Quest Communications Corporation, state as follows:

PARTIES

1. Plaintiff, The Farmers & Merchants Mutual Telephone Company of Wayland, Iowa, is an Iowa corporation with its principal place of business in Wayland, Iowa.

2. Upon information and belief, Defendant, Quest Communications Corporation, is a Delaware corporation, with its principal place of business in Denver, Colorado. At all relevant times, Defendant was qualified and registered to do business in the state of Iowa.

JURISDICTION AND VENUE

3. Subject matter jurisdiction in this matter is proper pursuant to 28 U.S.C. §1331 (federal question jurisdiction) because the claims at issue arise under the Federal Communications Act, 47 U.S.C. §§151, 207 et seq. Subject matter jurisdiction also is proper pursuant to 28 U.S.C. §1332 (diversity jurisdiction) because the parties' citizenship is diverse

Searsboro Telephone Company, Inc., et al v. Qwest Communications Company, LLC, Case No. 4:09-cv-00308-JEG-CFB

Qwest Communications Company's Motion to Consolidate With Case No. 07-0078-JEG-RAW Before the United States District Court for the Southern District of Iowa, Central Division

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

SEARSBORO TELEPHONE COMPANY, INC. LYNNVILLE TELEPHONE COMPANY, INC. Plaintiffs, v. QWEST COMMUNICATIONS COMPANY, LLC Defendant.	))))))))))))))	**No. 4:09-cv-00308-JEG-CFB**

QWEST COMMUNICATIONS COMPANY'S MOTION TO CONSOLIDATE WITH CASE NO. 07-0078-JEG-RAW

Pursuant to Federal Rule of Civil Procedure 42, Qwest Communications Company, LLC ("Qwest") moves to consolidate this action with the case that Qwest already has pending against several local exchange carriers ("LECs") and free calling service companies, regarding the same subject – traffic pumping, also known as access stimulation. Because there are common questions of law and fact, judicial economy will be served by consolidating, and no party will be unfairly prejudiced, the Court should consolidate this action with Qwest's pending case in Civil Action No. 07-78-JEG-RAW ("Case 07-78").

For each of the reasons stated above and in Qwest's attached Memorandum in Support, the Court should consolidate the Plaintiffs' action with Qwest's Action, Case No. 07-78, and even if not consolidated, should reassign the magistrate on the case to Magistrate Judge Walters.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

SEARSBORO TELEPHONE COMPANY, INC. LYNNVILLE TELEPHONE COMPANY, INC. Plaintiffs, v. QWEST COMMUNICATIONS COMPANY, LLC Defendant.	**No. 4:09-cv-00308-JEG-CFB**

QWEST COMMUNICATIONS COMPANY'S MEMORANDUM IN SUPPORT OF MOTION TO CONSOLIDATE WITH CASE NO. 07-0078-JEG-RAW

Pursuant to Federal Rule of Civil Procedure 42, Qwest Communications Company, LLC ("Qwest") moves to consolidate this action with the case that Qwest already has pending against several local exchange carriers ("LECs") and free calling service companies regarding the same subject – traffic pumping, also known as access stimulation. Qwest's pending case is Civil Action No. 07-78-JEG-RAW ("Case 07-78"); the Court has stayed that action until the Federal Communications Commission ("FCC") issues its ruling on further proceedings for reconsideration in the related traffic pumping complaint that Qwest brought to the FCC, *In re Qwest Communications Corp. vs. Farmers & Merchants Mutual Tel. Co. of Wayland, Iowa,* File No. EB-07-MD-001 ("*Merchants*"). Given the factual similarities between this case and Case 07-78, Qwest respectfully requests that the cases be consolidated.[1]

[1] To Qwest's knowledge the pending traffic pumping cases in this Court are the following: *AT&T Corp. v. Superior Tel. Coop.,* Civil Action No. 07-43-JEG-RAW; *Sprint Commc'ns Co., L.P. v Superior Tel.*

September 25, 2009. See Dkt. Entry, August 7, 2009. The case was transferred to this Court on August 10, 2009. Dkt. 21.

Unless this case is stayed, Qwest plans to file a new motion to dismiss in this court (relating to two new claims brought by Plaintiffs), and to answer and counterclaim. Qwest hopes to avoid proceeding on two different paths in very similar cases, with one case being stayed, and the other proceeding to the merits. Qwest seeks to have this case consolidated with Case 07-78 so that all aspects of the cases will proceed simultaneously.

II. ARGUMENT

A. The Court Should Consolidate This Action With Case 07-78 Due to Common Questions of Law and Fact, Economy in Administration, and Lack of Prejudice to Any Party.

Because both this case and Case 07-78 concern traffic pumping of Iowa LECs, the Court should consolidate the Plaintiffs' action against Qwest with the already-pending Case 07-78. Pursuant to Rule 42(a), the Court may order consolidation, coordination of discovery, and reassignment. "If actions before the court involve a common question of law or fact, the court may … (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay." Fed. R. Civ. P. 42(a).

"The party seeking consolidation bears the burden of showing that it would promote judicial convenience and economy." *Blood v. Givaudan Flavors Corp.*, 2009 WL 982022, *2 -3 (N.D. Iowa April 10, 2009) (internal quotation marks omitted; collecting cases).

> The Rule should be prudently employed as a valuable and important tool of judicial administration, invoked to expedite trial and eliminate unnecessary repetition and confusion. … Consolidation has historically been a matter of convenience and economy in administration … and its purpose is to avoid unnecessary cost or delay.

Bendzak v. Midland Nat'l Life Ins. Co., 240 F.R.D. 449, 450 (S.D. Iowa 2007) (internal quotation marks omitted). "Consolidation is inappropriate, however, if it leads to inefficiency, inconvenience, or unfair prejudice to a party." *E.E.O.C. v. HBE Corp.*, 135 F.3d 543, 551 (8th Cir. 1998). The court should weigh the following factors:

> 'Whether the specific risks of prejudice and possible confusion are overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.'

Blood, 2009 WL 982022 at *3 (quoting *Cantrell v. GAF*, 999 F.2d 1007, 1011 (6th Cir. 1993), in turn quoting *Hendrix v. Raybestos-Manhattan Inc.*, 776 F.2d 1492, 1495 (11th Cir. 1985)). In sum, consolidation is appropriate when there are common questions, judicial economy from consolidating, and no unfair prejudice to a party.

Here, Rule 42's requirements are certainly met. All or virtually all of the legal questions in Case 07-78 are likewise legal questions in the Plaintiffs' action, and the cases likewise share many of the same factual questions for discovery:

- Plaintiffs share their chief officer with one of the defendant LECs in Case 07-78, Reasnor Telephone Co. and have a relationship with Sully Telephone Association whereby Sully manages the Plaintiffs' operations, similar to the relationship that Reasnor also has with Sully; accordingly, Qwest will need for both cases to obtain discovery from the same chief officer, Gary Neill, and the same officer of Sully, Arie Scholten;
- The LECs utilize the same substantive tariffs, and thus the issues presented for resolution will be identical; namely, whether the calls in question meet the strict requirements of the tariffs such that the LECs can bill Qwest for switched access

Aventure Communications Technology, LLC v. MCI Communications Services, Inc.

Docket No. 5:07-cv-04095

United States District Court for the Northern District of Iowa (Western Division)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

AVENTURE COMMUNICATIONS TECHNOLOGY, LLC, an Iowa Limited Liability Company, Plaintiff, -against- MCI COMMUNICATIONS SERVICES INC., d/b/a Verizon Business Services, a Delaware corporation, Defendant, GLOBAL CONFERENCE PARTNERS, LLC d/b/a FreeConference.com, a California limited liability company, Counterclaim Defendant, FUTUREPPHONE.DOC, LLC d/b/a/ Futurephone.com, a Nevada limited liability company, Counterclaim Defendant.	Case No. 5:07-CV-04095 **AMENDED ANSWER TO AMENDED COMPLAINT, AMENDED COUNTERCLAIMS, AND JURY DEMAND**

Defendant MCI Communications Services Inc. d/b/a Verizon Business Services ("Defendant") by its undersigned counsel, for its answer and defenses to Aventure Communications Technology, LLC's ("Plaintiff") Amended Complaint, states as follows:

ALLEGATIONS COMMON TO ALL COUNTS

Paragraph 1: Plaintiff, Aventure Communications Technology, L.L.C., is a limited liability company organized and existing under the laws of Iowa, with its principal place of business in Sioux City, Iowa.

1. Defendant admits the allegations in paragraph 1 of the Amended Complaint.

each other.

COUNT V

Violation of Section 201(b) of the Communications Act
(Counterclaim Defendant Aventure)

94. Verizon Business re-alleges and incorporates by reference the foregoing paragraphs.

95. Section 201(b) of the Communications Act prohibits unjust or unreasonable rates or practices by a telecommunications carrier.

96. Aventure engaged in unjust and unreasonable practices by (i) conspiring to artificially and exponentially increase the volume of long-distance phone traffic handled by Aventure; and (ii) fraudulently billing Verizon Business for Switched Access Service that Aventure did not provide; (iii) billing Verizon Business for Switched Access Service pursuant to unlawful "rural CLEC" tariffs and at unlawful rates; and (iv) billing Verizon Business for purported Switched Access Service that crossed multiple LATAs in violation of Aventure's Tariffs.

97. Verizon Business is entitled to damages in the amount of the unauthorized Switched Access Service charges paid to Aventure, plus reasonable costs and attorney's fees. In this regard, Aventure's federal tariffs were void *ab initio* and, in any event, were not filed with the requisite notice for Aventure to be protected from refunds.

98. Verizon Business is also entitled to an order enjoining Aventure from assessing charges on Verizon Business pursuant to its unlawful traffic pumping scheme.

99. Verizon Business is further entitled to a declaratory judgment and declaration of

Sancom, Inc. v. Qwest Communications Corporation

Docket No. 07-4147-KES

United States District Court for the Southern District of South Dakota (Southern Division)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

SANCOM, INC., a South Dakota Corporation, Plaintiff, Counterclaim Defendant vs. QWEST COMMUNICATIONS CORPORATION, a Delaware Corporation, Defendant, Counterclaimant vs. FREE CONFERENCING CORP., a Nevada Corporation, Counterclaim Defendant.	*	CIV. 07-4147-KES QWEST COMMUNICATIONS CORPORATION'S FIRST AMENDED COUNTERCLAIMS

Qwest Communications Corporation ("Qwest"), by and through its attorneys, submits its First Amended Counterclaim against Plaintiff/Counterclaim Defendant Sancom, Inc. ("Sancom"), and Counterclaim Defendant Free Conferencing Corporation ("Free Conference"), and alleges as follows:

INTRODUCTION

1. Through this lawsuit, Qwest seeks to stop Sancom from engaging in their illegal, unfair and fraudulent practice of obtaining hundreds of thousands of dollars in purported terminating switched access charges from Qwest to which Sancom is not entitled. Specifically,

B. <u>Sancom Defrauds Long Distance Companies Like Qwest By Generating Unreasonably High Terminating Switched Access Charges and then Providing a Kickback of a Portion of These Charges to the Free Calling Service Companies, Primarily Free Conference.</u>

12. Sancom has undertaken business relationships with certain partners to whom it provides connections – the Free Calling Service Companies including, but not limited to, Free Conference – to exploit Sancom's exclusive ownership of facilities that can be connected to telephone numbers within their local service area. The goal of these relationships was and is to dramatically increase the amount of long distance traffic delivered through Sancom's switches to Sancom's partners, namely to the Free Calling Service Companies, and bill long distance carriers such as Qwest exorbitantly high terminating switched access charges.

13. As part of Sancom's scheme, it submitted interstate access tariffs with the FCC and intrastate tariffs with the South Dakota Public Utilities Commission, which allow Sancom to collect terminating switched access charges on calls, but only if Sancom meets certain requirements and conditions as stated within the tariffs. Sancom attempts to collect these terminating switched access revenues on all calls routed to or through FCSCs.

14. The interstate and intrastate access tariffs, however, do not apply to calls routed to or through the FCSCs including Free Conference and do not authorize terminating switched access charges on those calls for several reasons set out *infra* herein. Sancom's tariffs mandate that terminating switched access applies only if, among other things, the calls are made to one of Sancom's end-user customers, delivered to the end-user's premises and terminated by Sancom within Sancom's local calling area.

15. Sancom conspired with the FCSCs including Free Conference to act as their purported local telephone exchange provider. The FCSCs connected their equipment to

Northern Valley Communications L.L.C. and Sancom, Inc., v. MCI Communications Services, Inc. d/b/a Verizon Business Services

Docket No. 1:07-cv-01016

United States District Court for the District of South Dakota (Northern Division)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

NORTHERN VALLEY COMMUNICATIONS, LLC, A SOUTH DAKOTA LIMITED LIABILITY COMPANY, PLAINTIFF, -vs- MCI COMMUNICATIONS SERVICES, INC., D/B/A VERIZON BUSINESS SERVICES, A DELAWARE CORPORATION, DEFENDANT.	)	CIV 07-1016 **ANSWER, COUNTERCLAIMS AND JURY DEMAND**

Defendant MCI Communications Services, Inc. d/b/a Verizon Business Services ("Defendant") by its undersigned counsel, for its answer and defenses to Northern Valley Communications, LLC's ("Plaintiff") Complaint, states as follows:

I. NATURE OF THE CASE

Paragraph 1: Plaintiff brings this action against Defendant to recover on an account for failure of Defendant to pay to Plaintiff the amounts required by federal and state tariffs to be paid for the provisioning of originating and terminating telephone access services.

1. Defendant denies the allegations in paragraph 1 of the Complaint.

COUNT VI

(Violation of Section 201(b) of the Communications Act)
(Counterclaim Defendant Northern Valley)

111. Verizon Business re-alleges and incorporates by reference the foregoing paragraphs.

112. Section 201(b) of the Communications Act prohibits unjust or unreasonable rates or practices by a telecommunications carrier.

113. Northern Valley engaged in unjust and unreasonable practices by (i) conspiring to artificially and exponentially increase the volume of long-distance phone traffic handled by Northern Valley; and (ii) fraudulently billing Verizon Business for Switched Access Service that Northern Valley did not provide, and that was associated with long-distance calls that the Counterclaim Defendants conspired to generate.

114. Verizon Business is entitled to damages in the amount of the unauthorized Switched Access Service charges paid to Northern Valley, plus reasonable costs and attorney's fees.

115. Verizon Business is also entitled to an order enjoining Northern Valley from assessing charges on Verizon Business pursuant to its unlawful traffic pumping scheme.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

****

NORTHERN VALLEY COMMUNICATIONS, LLC, a South Dakota Limited Liability Company, Plaintiff, vs. MCI COMMUNICATIONS SERVICES INC., D/B/A VERIZON BUSINESS SERVICES, a Delaware Corporation, Defendant, GLOBAL CONFERENCE PARTNERS, LLC, Counterclaim Defendant.	*	**SECOND AMENDED ANSWER TO SANCOM'S COMPLAINT, AMENDED COUNTERCLAIMS, AND JURY DEMAND** Civ. 07-1016
************************************	*	
SANCOM, INC., a South Dakota Corporation, Plaintiff, vs. MCI COMMUNICATIONS SERVICES INC., D/B/A VERIZON BUSINESS SERVICES, a Delaware Corporation, Defendant, FREECONFERENCING CORP., a Nevada Corporation, and CITRIX ONLINE LLC, a Delaware Limited Liability Company, Counterclaim Defendants.	*	Civ. 07-4106 **THIS DOCUMENT RELATES TO CIV. 07-4106 ONLY**

****

COUNT VI

Violation of Section 201(b) of the Communications Act (Counterclaim Defendant Sancom)

107. Verizon Business re-alleges and incorporates by reference the foregoing paragraphs.

108. Section 201(b) of the Communications Act prohibits unjust or unreasonable rates or practices by a telecommunications carrier.

109. Sancom engaged in unjust and unreasonable practices by (i) conspiring to artificially and exponentially increase the volume of long-distance phone traffic handled by Sancom; and (ii) fraudulently billing Verizon Business for Switched Access Service that Sancom did not provide; and (iii) billing Verizon Business for Switched Access Service pursuant to unlawful "rural CLEC" tariffs and at unlawful rates.

110. Verizon Business is entitled to damages in the amount of the unauthorized Switched Access Service charges paid to Sancom, plus reasonable costs and attorney's fees. In this regard, Sancom's federal tariffs were void *ab initio* and, in any event, were not filed with the requisite notice for Sancom to be protected from refunds.

Sancom, Inc. v. Sprint Communications Company

Docket No. 4:07-cv-04107

United States District Court for the District of South Dakota (Southern Division)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

SANCOM, INC., a South Dakota Corporation, Plaintiff, vs. SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP, a Delaware partnership, Defendant.	*	CIV. 07-4107 **DEFENDANT'S ANSWER AND COUNTERCLAIM**

Comes now the Defendant Sprint Communications Company Limited Partnership and for its Answer to the Plaintiff's Complaint states and alleges as follows:

1. As to Paragraph 1, it is admitted only that Plaintiffs have brought an action making the allegations stated. The allegations, however, are denied.

2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted.

4. As to Paragraph 4, it is admitted that the Court has jurisdiction of the Plaintiff's Complaint pursuant to 28 USC § 1332 as there is diversity between the Plaintiff and Defendant and the Plaintiff's claimed damages are allegedly in excess of $75,000.

5. As to Paragraph 5, this is a legal conclusion to which no response is required.

6. Paragraph 6 is admitted.

7. Paragraph 7 is admitted.

8. As to Paragraph 8, it is denied that the bills at issue here are based on originating and terminating access service.

other carriers' phone lines. For example, when a Sprint customer in Virginia places a call to someone in South Dakota, Sprint must use the facilities of the local phone company to deliver the call to the called party.[1] Because it must purchase use of these local facilities, Sprint is not only a provider of telecommunications services, but also a customer of local telecommunications carriers. This counterclaim challenges a scam by Sancom, a local phone company in Mitchell, South Dakota, and its business partners pursuant to which Sancom has billed (and continue to bill) millions of dollars of unauthorized and illegal charges to Sprint allegedly in its role as a customer of the local phone companies.

2. This case involves two types of companies that have conspired together to generate the charges at issue. Sancom is the first type of company, a local exchange carrier ("LEC") that delivers calls to local customers. Sancom has conspired with a second type of company ("Call Connection Company") that has established free or nearly free conference-calling, chat-line, or similar services that callers throughout the United States use to connect to other callers. Sancom and the Call Connection Companies collectively are engaged in unlawful schemes to bill Sprint (along with other carriers) for charges Sprint neither expressly nor implicitly agreed to pay because the charges are not authorized under applicable tariffs. The scam, which is commonly referred to as "traffic-pumping," has two components.

3. First, in contrast to LECs in other parts of the country that often charge considerably less than a penny per minute for similar access services, Sancom charges very high rates – approximately 3.94 cents per minute – to long-distance carriers to "terminate" interstate calls to the local carrier's customers (and more than 12 cents per minute for intrastate

[1] There is an exception when the call is to a Sprint wireless customer, but that exception is not relevant here.

Northern Valley Communications L.L.C. v. Sprint Communications Company

Docket No. 1:08-cv-01003

United States District Court for the District of South Dakota (Northern Division)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

NORTHERN VALLEY COMMUNICATIONS, LLC, a South Dakota Limited Liability Company, Plaintiff, vs. SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP, a Delaware partnership, Defendant.	*	CIV. 08-1003 **DEFENDANT'S ANSWER AND COUNTERCLAIM**

Comes now the Defendant Sprint Communications Company Limited Partnership and for its Answer to the Plaintiff's Complaint states and alleges as follows:

1. As to Paragraph 1, it is admitted only that Plaintiffs have brought an action making the allegations stated. The allegations, however, are denied.

2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted.

4. As to Paragraph 4, it is admitted that the Court has jurisdiction of the Plaintiff's Complaint pursuant to 28 USC § 1332 as there is diversity between the Plaintiff and Defendant and the Plaintiff's claimed damages are allegedly in excess of $75,000.

5. As to Paragraph 5, this is a legal conclusion to which no response is required.

6. As to Paragraph 6, it is denied that Plaintiff qualifies as a competitive local exchange carrier as defined in 47 C.F.R. § 61.26(a)(1) or otherwise in the Federal Communications Commission's regulations. The remainder of Paragraph 6 is admitted.

7. Paragraph 7 is admitted.

8. As to Paragraph 8, it is denied that the bills at issue here are based on originating and terminating access service.

COUNT FIVE

(Civil Conspiracy)

58. Sprint repeats and realleges each and every allegation contained in paragraphs 1 through 57 of its Counterclaim as if fully set forth herein.

59. On information and belief, Northern Valley and one or more of the Call Connection Companies agreed to an illicit arrangement or arrangement as follows: (a) the Call Connection Companies would place a "gateway" to connect calls near Northern Valley's service territory; (b) Northern Valley would assign one or more telephone numbers to the Call Connection Companies; (c) Northern Valley would bill Sprint for terminating access charges on long distance calls that were routed through the Call Connection Companies; (d) the Call Connection Companies would market services designed to increase volumes of traffic routed through Northern Valley's serving area; and (e) Northern Valley would share with the Call Connection Companies a portion of the monies billed to or received from Sprint.

60. As explained above, Northern Valley's conduct in billing Sprint for terminating access services for these calls violates the terms of Northern Valley's federal and state access tariffs, as well as federal and state law. Further, the conduct of Northern Valley and the Call Connection Companies has intentionally caused Northern Valley and these companies to be in wrongful possession and control of monies that rightfully belong to Sprint, contrary to Sprint's possessory right thereto.

61. The agreements reached between Northern Valley and one or more of the Call Connection Companies constitute agreements to take unlawful actions. The agreements between Northern Valley and one or more of the Call Connection Companies constitute a civil conspiracy or conspiracies, and Northern Valley and the Call Connection Companies are liable for the harm

caused by the unlawful acts taken in furtherance of the conspiracy. These acts include the advertising of the free conference calling services, the provision of kickbacks, and the billing of access charges on traffic for which no access charges were due.

62. The unlawful actions taken during and in furtherance of the lawful agreements between Northern Valley and one or more of the Call Connection Companies have injured Sprint. Sprint is entitled to reasonable damages in an amount to be proven at trial.

COUNT SIX

(Violation of Communications Act)

63. Sprint repeats and realleges each and every allegation contained in paragraphs 1 through 62 of its Counterclaim as if fully set forth herein.

64. Northern Valley has billed and has collected millions of dollars in charges denominated as "terminating access" charges pursuant to a federal tariff imposing unlawfully high access charges, and based on an unreasonable practice of kickbacks. Because Northern Valley does not qualify as a "rural CLEC" under the FCC's regulations and federal law, it has no basis for setting its rates for access traffic at such a high level, and its tariff is void *ab initio* and it charges unreasonable pursuant to 47 U.S.C. § 201(b). Sprint is authorized to bring suit for damages for this conduct in this Court pursuant to 47 U.S.C. § 207.

65. Sprint is entitled to reasonable damages in the amount of the unlawful access charges paid to Northern Valley under Northern Valley's unlawful federal tariffs, plus reasonable costs and attorneys' fees, pursuant to 47 U.S.C. §§ 206, 207. Sprint will establish the amount of damages at trial.

66. Sprint is also entitled to an order enjoining Northern Valley from assessing charges on Sprint pursuant to its unlawful tariff. 28 U.S.C. §§ 2201, 2202.

Sancom, Inc. v. AT&T Corp.

Docket No. 4:08-cv-04211

United States District Court for the District of South Dakota (Southern Division)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SANCOM INC., Plaintiff,	1:08-CV-06933 (JGK)
v.	**ECF CASE**
AT&T CORP., Defendant.	JURY TRIAL DEMANDED

ANSWER

Defendant AT&T Corp. ("AT&T") by its undersigned counsel, Sidley Austin LLP, as for its answer and defenses to Plaintiff's Complaint ("Complaint"), dated August 4, 2008, states as follows:

1. AT&T admits that this action purports to collect amounts due under tariffs. AT&T denies the remaining allegations of paragraph 1.

2. AT&T lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 2, and those allegations are therefore denied.

3. AT&T admits the allegations in paragraph 3.

4. AT&T admits the Court has subject matter jurisdiction over claims that seek to collect amounts allegedly due under federal tariffs. AT&T denies the remaining allegations in paragraph 4.

5. AT&T admits that it resides in this judicial district. Although venue is proper, AT&T denies that this is a convenient forum for this litigation, and reserves its rights to seek to transfer the venue of this proceeding pursuant to 28 U.S.C. § 1404.

for the reasons stated above, Counterclaim Defendant has not and does not provide AT&T with terminating switched access services under Counterclaim Defendant's filed tariff for such calls.

43. Counterclaim Defendant has violated 47 U.S.C. § 203(c) by charging and continuing to charge for terminating switched access services under its filed tariff in a manner that is contrary to the rates, terms, and conditions in its published tariff.

44. AT&T has been damaged by Counterclaim Defendant's violations of Section 203(c), and prays for damages in an amount to be determined at trial, interest, attorneys' fees, court costs, declaratory relief, injunctive relief and such other relief as the Court may deem just and reasonable.

COUNT II
(Unreasonable Practice in Violation of 47 U.S.C. § 201(b); Billing For Services Not Provided)

45. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 through 44 of its Counterclaims as if set forth fully herein.

46. Counterclaim Defendant has engaged in and continue to engage in unjust and unreasonable practices in connection with its provision of interstate communications services, in violation of 47 U.S.C. § 201(b), which provides that "all . . . practices" for and in connection with interstate services "shall be just and reasonable," and "any such . . . practice . . . that is unjust and unreasonable is hereby declared to be unlawful." 47 U.S.C. § 201(b).

47. Counterclaim Defendant has engaged in a scheme to knowingly charge AT&T and other long distance carriers for terminating switched access services pursuant to its tariff for long distance calls to the numbers advertised by the FCPs with which Counterclaim Defendant has a business relationship.

48. On information and belief, Counterclaim Defendant did not provide terminating switched access services for those calls as that term is defined by its tariff.

Northern Valley Communications L.L.C. v. XO Communications Services, Inc.

Docket No. 1:09-cv-01002

United States District Court for the District of South Dakota (Southern Division)

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'08 CIV 6800.

ECF CASE

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NORTHERN VALLEY COMMUNICATIONS, L.L.C., Plaintiff,	Civil Action No. ________
v.	COMPLAINT
XO COMMUNICATIONS SERVICES, INC., Defendant.	JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Northern Valley Communications, L.L.C., by its undersigned counsel, as and for its Complaint against the Defendant, XO Communications Services, Inc., alleges as follows:

NATURE OF THE CASE

1. Plaintiff brings this action against Defendant to recover on an account for failure of Defendant to pay to Plaintiff the amounts due under federal and state tariffs for the provisioning of originating and terminating telephone access services.

Northern Valley Communications L.L.C. v. AT&T Corp.

Docket No. 1:09-cv-01003

United States District Court for the District of South Dakota (Northern Division)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NORTHERN VALLEY COMMUNICATIONS L.L.C., Plaintiff, v. AT&T CORP., Defendant.	1:08-CV-06798 (GBD) **ECF CASE** JURY TRIAL DEMANDED

ANSWER

Defendant AT&T Corp. ("AT&T") by its undersigned counsel, Sidley Austin LLP, as for its answer and defenses to Plaintiff's Complaint ("Complaint"), dated July 30, 2008, states as follows:

1. AT&T admits that this action purports to collect amounts due under tariffs. AT&T denies the remaining allegations of paragraph 1.

2. AT&T lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 2, and those allegations are therefore denied.

3. AT&T admits the allegations in paragraph 3.

4. AT&T admits the Court has subject matter jurisdiction over claims that seek to collect amounts allegedly due under federal tariffs. AT&T denies the remaining allegations in paragraph 4.

5. AT&T admits that it resides in this judicial district. Although venue is proper, AT&T denies that this is a convenient forum for this litigation, and reserves its rights to seek to transfer the venue of this proceeding pursuant to 28 U.S.C. § 1404.

switching, and trunking facilities and for the use of common subscriber plant of the Telephone Company. Switched Access Service provides for the ability to originate calls from an end user's premises to a customer designated premises, and to terminate calls from a customer designated premises to an end user's premises in the LATA where it is provided."

42. Counterclaim Defendant has collected and continues to attempt to collect payments from AT&T under this tariff for terminating switched access on calls to the "free" conferencing, chat room, and international calls offered by the FCPs. On information and belief, for the reasons stated above, Counterclaim Defendant has not and does not provide AT&T with terminating switched access services under Counterclaim Defendant's filed tariff for such calls.

43. Counterclaim Defendant has violated 47 U.S.C. § 203(c) by charging and continuing to charge for terminating switched access services under its filed tariff in a manner that is contrary to the rates, terms, and conditions in its published tariff.

44. AT&T has been damaged by Counterclaim Defendant's violations of Section 203(c), and prays for damages in an amount to be determined at trial, interest, attorneys' fees, court costs, declaratory relief, injunctive relief and such other relief as the Court may deem just and reasonable.

COUNT II
(Unreasonable Practice in Violation of 47 U.S.C. § 201(b); Billing For Services Not Provided)

45. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 through 44 of its Counterclaims as if set forth fully herein.

46. Counterclaim Defendant has engaged in and continue to engage in unjust and unreasonable practices in connection with its provision of interstate communications services, in violation of 47 U.S.C. § 201(b), which provides that "all . . . practices" for and in connection

with interstate services "shall be just and reasonable," and "any such . . . practice . . . that is unjust and unreasonable is hereby declared to be unlawful." 47 U.S.C. § 201(b).

47. Counterclaim Defendant has engaged in a scheme to knowingly charge AT&T and other long distance carriers for terminating switched access services pursuant to its tariff for long distance calls to the numbers advertised by the FCPs with which Counterclaim Defendant has a business relationship.

48. On information and belief, Counterclaim Defendant did not provide terminating switched access services for those calls as that term is defined by its tariff.

49. On information and belief, Counterclaim Defendant did not provide terminating switched access services for those calls, as provided for in the Act, including 47 U.S.C. § 153(16) (access services are "for the purpose of origination or termination of the telephone toll service"), and in governing rules and orders of the FCC.

50. By deliberately charging, demanding, and collecting compensation for service under its tariff that it does not provide, Counterclaim Defendant has engaged in unjust and unreasonable practices in violation of 47 U.S.C. § 201(b).

51. AT&T has been damaged by Counterclaim Defendant's violations of Section 201(b), and prays for damages in an amount to be determined at trial, interest, attorneys' fees, court costs, declaratory relief, injunctive relief and such other relief as the Court may deem just and reasonable.

COUNT III
(Fraudulent and Negligent Misrepresentation)

52. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 through 51 of its Counterclaims as if set forth fully herein.

Northern Valley Communications L.L.C. v. Qwest Communications Corporation

Docket No. 1:09-cv-01004

United States District Court for the District of South Dakota (Southern Division)

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08 CIV 6799

ECF CASE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NORTHERN VALLEY COMMUNICATIONS, L.L.C.,

Plaintiff,

v.

QWEST COMMUNICATIONS CORPORATION,

Defendant.

Civil Action No. __________

COMPLAINT

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Northern Valley Communications, L.L.C., by its undersigned counsel, as and for its Complaint against the Defendant, Qwest Communications Corporation, alleges as follows:

NATURE OF THE CASE

1. Plaintiff brings this action against Defendant to recover on an account for failure of Defendant to pay to Plaintiff the amounts due under federal and state tariffs for the provisioning of originating and terminating telephone access services.

AT&T Corp. v. Tekstar Communications
Docket No. 07-cv-02563
United States District Court
for the District of Minnesota

For Dockets See 0:07cv02563

United States District Court, D. Minnesota.
AT&T CORP., Plaintiff,
v.
TEKSTAR COMMUNICATIONS INC., Futurephone.com LLC (www.futurephone.com), Vapps LLC (www.confreecall.com), Am Wiz and Global Conference Partners (www.superphone.com), Patrick Phelan and Nucom Telecom (www.yak4ever.com), Conference Express (www.myfreeteleconference.com and www.totallyfreeconferencecalls.com), Powercom (www.freegoconference.com), Melaleuca, Inc. (www.iglidefreeconfcalling.com), Ripple Communications (www.mrconference.com), Liveoffice Corporation (freeconferencing.liveoffice.com), Fatbottomline, LLC (www.easyfreeconference.com), Patti Lamb and Alexandria Services, LLC (www.talkline99.com), Callall, LLC (167.142.180.46/corporatewebsite/ and www.callall.com), www.freecalls2china.com, and Does 1-10, Defendants.
No. 07CV02563.
June 1, 2007.

Jury Trial Demanded

Complaint

Respectfully submitted, Gregory R. Merz, MN Atty No. 185942, Gray Plant Mooty, 500 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402, (612) 632-3257.Of Counsel: James F. Bendernagel, David L. Lawson, Sidley Austin LLP, 1501 K Street, N.W., Washington, D.C. 20005, (202) 736-8000.David W. Carpenter, Sidley Austin LLP, One South Dearborn Street, Chicago, Illinois 60603, (312) 853-7000.Lawrence J. Lafaro, Brian W. Moore, AT&T Corp., One AT&T Way, Bedminster, New Jersey 07921, (908) 234-6263.
AT&T Corp. ("AT&T"), by and through its attorneys, for its complaint against Defendants **Tekstar** Communications Inc. (" **Tekstar**"), Futurephone.com LLC (www.futurephone.com), Vapps LLC (www.confreecall.com), Am Wiz and Global Conference Partners (www.superphone.com), Patrick Phelan and Nucom Telecom (www.yak4ever.com), Conference Express (www.myfreeteleconference.com and www.totallyfreeconferencecalls.com), Powercom (www.freegoconference.com), Melaleuca, Inc. (www.iglidefreeconfcalling.com), Ripple Communications (www.mrconference.com), LiveOffice Corporation (freeconferencing.liveoffice.com), Fatbottomline, LLC (www.easyfreeconference.com), Patti Lamb and Alexandria Services, LLC (www.talkline99.com), CallAll, LLC (167.142.180.46/corporatewebsite/ and www.callall.com), www.freecalls2china.com, and Does 1-10 (collectively, "Defendants"), alleges as follows:

INTRODUCTION

1. By this action, AT&T seeks to stop deceitful and unlawful schemes through which AT&T unlawfully is billed exorbitant fees for call termination services that are not provided. Defendants' schemes violate federal communications laws and regulations, the federal and state tariffs that govern Defendants' terminating access services, and applicable state laws.

2. Defendants in this action fall into two categories. In the first group is Defendant **Tekstar**, which is a compet-

places the call has not been registered. Instead, unregistered callers that call the traffic pumping number receive a message that does not identify the operator or nature of the service.

23. Usage of these calling schemes is growing exponentially, and the parties engaged in such conduct are becoming increasingly aggressive and difficult to identify. Absent immediate action to put an end to the Defendants' unlawful practices, long-distance carriers may be compelled to raise long-distance rates to cover their increasing costs. The Defendants' unlawful schemes thus would force ordinary long-distance callers to subsidize the telephone bills of a small minority of callers involved in Defendants' unlawful schemes.

24. Further, if these schemes are allowed to continue, they will force ordinary long-distance callers to subsidize foreign callers for international calls that neither originate nor terminate in the United States, but that are routed through Minnesota solely to obtain funding for the schemes from U.S. long-distance carriers and their customers through billing for exorbitant access charges. In fact, such traffic already is traversing AT&T's network, and, upon information and belief, Defendant **Tekstar** has recently conspired with an Ireland-based company (that is in the business of selling franchises for international telephone calling services) to advertise free international calling in Europe and elsewhere to callers that dial a Minnesota number supplied by **Tekstar**.

25. These schemes to inflate the volume of long-distance traffic into rural Minnesota exchanges also are causing network congestion that disrupts ordinary long-distance calls to the residents of these communities.

26. Finally, on information and belief, **Tekstar** is routing these calls through the service area of its affiliate East Otter Tail in a manner designed to inflate the transport charges that **Tekstar** bills AT&T in connection with these calls in violation of 47 U.S.C. § 201(b). The FCC has held that the creation of a CLEC to obtain revenues that could not be collected by the existing carrier constitutes a "sham" in "violation of section 201(b) of the Act." *Total Telecomms. Servs., Inc.*, 16 FCC Rcd. 5726, ¶ 16 (2001); *see also id.* (where an entity is created as a "sham ... to extract access charges from [long-distance carriers] ... that artifice constitutes an unreasonable practice in connection with the provision of access service in violation of section 201(b) of the Act").

27. AT&T seeks restitution and damages, and declaratory rulings that the above-described schemes are unlawful, that AT&T is not required to pay the unlawful access service bills issued to it, and that Defendants are not entitled to bill AT&T for such calls in the future. AT&T also seeks an injunction against Defendants from perpetuating the schemes described herein.

JURISDICTION AND VENUE

28. This Court has original jurisdiction over this action under 28 U.S.C. §§ 1331, 1337, and 47 U.S.C. § 207 because AT&T's claims arise under the federal Communications Act, a law of the United States. This Court has jurisdiction over the state law claims asserted in this action under 28 U.S.C. § 1367(a). Finally, this Court has jurisdiction over AT&T's requests for declaratory relief under 28 U.S.C. §§ 2201 and 2202.

29. Venue is proper in this judicial district under 28 U.S.C. § 1391. One or more Defendants reside in this judicial district, and all defendants reside in Minnesota within the meaning of 28 U.S.C. § 1391(b). Alternatively, one or more Defendants may be found in this judicial district and there is no other district in which the action otherwise may be brought.

PARTIES

Tekstar Communications, Inc. v. Sprint Communications Company, L.P.
Docket No. 008CV01130
United States District Court
For the District of Michigan

For Dockets See 0:08cv01130

United States District Court, D. Minnesota.
TEKSTAR COMMUNICATIONS, INC., Plaintiff,
v.
SPRINT COMMUNICATIONS COMPANY, L.P., Defendant.
No. 008CV01130.
May 22, 2008.

Answer and Counterclaim

Briggs and Morgan P.A., Philip R. Schenkenberg (#260551), Kevin M. Decker (#0314341), 2200 Ids Center, 80 South Eighth Street, Minneapolis, Minnesota 55402 , (612) 977-8400, Attorneys for Sprint, Communications Company, L.P., Bret Lawson, Esq., Sprint Nextel, Mail Stop Ksophn0304-3b511, 6450 Sprint Parkway, Overland Park, KS 66251.

ANSWER

Sprint Communications Company L.P. ("Sprint") answers the **Tekstar** Communications, Inc. (" **Tekstar**") complaint as follows:

1. Generally denies the allegations in the complaint except as admitted or qualified.

2. Admits Paragraphs 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 23, 61 and 65.

3. Denies Paragraphs 1, 2, 34, 35, 38, 39, 44, 45, 46, 51, 52, 53, 54, 57, 58, 62, 63, 67, 68, 69 and 70.

4. Paragraphs 36, 40, 47, 55, 59 and 64 do not require a separate response.

5. In response to Paragraph 5, admits the allegations, except that it states that its principal place of business is in Overland Park, Kansas, not Reston, Virginia.

6. In response to Paragraph 3, admits only that Sprint could seek relief against **Tekstar** through a number of judicial and administrative avenues.

7. In response to Paragraphs 6 and 7, admits only that jurisdiction is proper.

8. In response to Paragraph 17, admits only that a portion of 47 U.S.C. § 201(a) is properly quoted, and that the FCC has taken action in a CLEC Access Charge Reform docket.

9. In response to Paragraph 18, admits only that CLEC switched access service charges may be imposed only as provided for in filed tariffs.

10. In response to Paragraph 19, admits only that **Tekstar** has tariffs on file with the Federal Communications Commission ("FCC") and Minnesota Public Utilities Commission ("MPUC").

Sprint for using **Tekstar** facilities for switched access services. This access rate assumes relatively minimal telecommunications traffic, the thinking being that with little traffic **Tekstar** needs to exact a high rate to stay in business and Sprint is able to swallow the charge given the charge's supposed infrequency.

14. Once the extreme access rate is set, **Tekstar** turns the entire basis for the switched access service charge model on its head by providing local phone numbers to non-local, unscrupulous businesses that offer some other kind of phone service, such as international calling, chat lines, or conference calling. The non-local phone companies use local facilities to offer their services to the national public for "free" or nearly for free and, as a result, the telecommunications traffic skyrockets.

15. How are the international calls, etc. offered for "free"? The racket plays out as follows: When Sprint customers from all over the country call the advertised phone number to make their calls, **Tekstar** then bills Sprint the inflated switched access service charge to deliver its traffic to the international calling platform, chat line platform, or other service, even though **Tekstar** is not, in fact, providing switched access service as none of the parties who are communicating are end-user customers residing in **Tekstar's** territory. **Tekstar** bills so much in inflated switched access service charges through this scam that it is able to kick back a substantial portion of the monies received to its unscrupulous business partners. Even after payment of the kickback, **Tekstar** profits wildly from these illegal machinations.

16. As a result of offering a "free" or nearly free service, call volumes to **Tekstar's** "local" lines have gone through the roof. For example, on March 1, 2006, **Tekstar** issued a monthly bill to Sprint for $48,107.48, which represented the charges for 1,351,563 access minutes. On April 1, 2008, **Tekstar's** monthly bill was for $1,303,123.94, which purported to represent 31,303,737 access minutes, a 30-fold increase. This dramatic increase in traffic can be traced almost entirely to the infamous "traffic-pumping" scam.

F. The scheme is illegal

17. Traffic pumping is as unlawful as it is unseemly. A tariff that actually authorized the kind of scam in which **Tekstar** is engaged would not pass legal muster, and **Tekstar** has not, in fact, included these scam services within its schedule of tariffed charges. As a result, **Tekstar** has billed Sprint for services that are not authorized in their tariffs.

18. **Tekstar's** tariffs are written to describe - and authorize billing of switched access service charges for - the typical call where an interexchange carrier like Sprint delivers a call to the LEC for the call to be terminated to the local end user customer of the LEC. But the so-called "service" for which **Tekstar** is billing Sprint is not switched access service.

19. **Tekstar's** federal access tariff defines Switched Access Service as service that "provides for the ability ... to terminate calls from a customer designated premise to an end user's premises ..." A "customer" is defined as a customer of a service under the tariff. An end user is defined as a subscriber of an interstate or foreign telephone service.

20. **Tekstar's** state access tariff states that "Switched Access Service provides the ability ... to terminate calls from a Customer's Premises location to an End User's Premises." A "Customer" is one that orders access service, and an "End User" is one that subscribes to an intrastate service provided by an exchange carrier.

21. Terminating access requires actual completion of the telephone call to the end user of the call. But instead of

ATTACHMENT 4

Beehive Tel. Co., Inc. and Beehive Tel. Co. of Nevada, Inc. v. Sprint Communications Company, L.P.
Docket No. 2:08-cv-00380
United States District Court of Utah

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UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF Utah, CENTRAL DIVISION

BEEHIVE TELEPHONE CO., INC., a Utah corporation, and BEEHIVE TELEPHONE CO. OF NEVADA, INC., a Nevada corporation, Plaintiffs, v. SPRINT COMMUNICATIONS COMPANY L.P., a Delaware limited partnership, Defendant, v. ALL AMERICAN TELEPHONE CO., INC., a Nevada corporation, Third-Party Defendant	**ANSWER, COUNTERCLAIMS, AND THIRD PARTY COMPLAINT** Case No. 2:08-cv-00380 Hon. Dee Benson

39. Sprint is further entitled to a declaratory judgment and declaration of rights establishing that Beehive and All American have no right to charge or collect access charges based on transiting interstate long-distance calls from Sprint to entities that provide conference call, chat line, international call, or similar services that enable callers to connect to each other. 28 U.S.C. §§ 2201, 2202.

COUNT TWO

(Violation of Communications Act)

40. Sprint repeats and realleges each and every allegation contained in paragraphs 1 through 39 of its Counterclaim as if fully set forth herein.

41. Beehive and All American have billed and collected millions of dollars in charges denominated as "terminating access" charges pursuant to a federal tariff imposing unlawfully high access charges, and based on an unreasonable practice of kickbacks. This "traffic-pumping" scheme, as described herein, is itself an unreasonable practice by both Beehive and All American pursuant to 47 U.S.C. § 201(b). To the extent that All American's June 2008 tariff revisions, or any of the other All American or Beehive tariffs, seek to authorize access charges for traffic to such Call Connection partners, the tariffs that purport to authorize such charges are themselves unreasonable pursuant to 47 U.S.C. § 201(b).

42. Further, on information and belief, with the active and deliberate facilitation of Beehive, All American is purporting to provide these public telecommunications services in a local exchange that it is not authorized to serve by the Public Service Commission of Utah. Indeed, on information and belief, it began billing Sprint for call traffic sent before All American was even authorized to operate in Utah at all. Because All American is not authorized to provide services in Beehive's exchange, it has no lawful basis for applying its tariff to impose access

Beehive Telephone Co., Inc. and Beehive Telephone Co. of Nevada, Inc. v. Sprint Communications Company, L.P.

Docket No. 2:08-cv-00380

United States District Court for the District of Utah (Central Division)

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UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF Utah, CENTRAL DIVISION

BEEHIVE TELEPHONE CO., INC., a Utah corporation, and BEEHIVE TELEPHONE CO. OF NEVADA, INC., a Nevada corporation, Plaintiffs, v. SPRINT COMMUNICATIONS COMPANY L.P., a Delaware limited partnership, Defendant, v. ALL AMERICAN TELEPHONE CO., INC., a Nevada corporation, Third-Party Defendant	**ANSWER, COUNTERCLAIMS, AND THIRD PARTY COMPLAINT** Case No. 2:08-cv-00380 Hon. Dee Benson

charges on Sprint in this situation, and its charges are void and unlawful under the Communications Act and the Commission's regulations. Likewise, Beehive's access charges for knowingly delivering traffic to a carrier not authorized to provided telecommunications services in its exchange is an unreasonable practice pursuant to 47 U.S.C. § 201(b) and otherwise unlawful under the Communications Act and the Commission's regulations.

43. Further, on information and belief, All American is not a legitimate entity, independent of Beehive, that may properly assess access charges on Sprint. Rather, on information and belief, it is a "sham" entity operated directly or indirectly by Beehive solely for the purpose of extracting exorbitantly high access charges for traffic to Call Connection Companies from Sprint, using the very same equipment as Beehive. Therefore, both All American's access charges assessed to Sprint, and Beehive's access charges for knowingly delivering call traffic to Sprint, constitute an unreasonable practice pursuant to 47 U.S.C. § 201(b).

44. Further, All American does not qualify as a "rural CLEC" under the FCC's regulations and federal law, and it has no basis for setting its rates for access traffic at such a high level. In general, the FCC prohibits LECs such as All American from charging access rates that exceed the rates charged by the incumbent LECs ("ILECs") competing in the same area – in this case Qwest (in Utah) and Nevada Bell (in Nevada). However, there is an exception for competitive LECs ("CLECs") that compete in rural areas with ILECs that serve both urban and rural areas, which permits them to file higher rates. All American has set its access rates much higher than the competing ILEC Qwest, apparently on the theory that it qualifies as a "rural CLEC" under federal regulations. However, All American does not qualify as a rural CLEC under federal law and relevant FCC regulations, including 47 CFR 61.26(a), because it is not